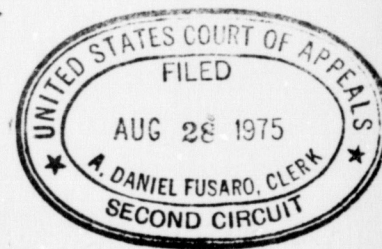


***United States Court of Appeals
for the Second Circuit***



APPENDIX

B
p/s
75-1268



United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

JACK L. CHESTNUT,

Defendant-Appellant.

APPEAL FROM UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPENDIX

Volume VI

Pages 591-697

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PAGINATION AS IN ORIGINAL COPY

THE COURT: Proceed, please.

MR. BANNIGAN: If it please the Court, counsel for the defense, Madame Forelady, ladies and gentlemen of the jury.

What is this case really all about? I almost feel embarrassed to tell you. We have only been here for two days. You have heard all the evidence. The problem is that certain issues have been interjected into this case which have no place here whatsoever.

The case very simply, ladies and gentlemen, as I told you in my opening, is nothing more than a criminal trial about how an overzealous, and I submit to you ladies and gentlemen, ambitious attorney, devised an illegal scheme to pay the debts of the Humphrey campaign. It is that simple.

Ladies and gentlemen, the evidence that this wasn't a wilful and intentional violation carried out by Mr. Chestnut is overwhelming, not only from the witnesses, but from the documents that you see before you, documents that have been introduced into evidence, documents which have not been and cannot be contradicted. It is a case about how an attorney violated statutes designed to insure the integrity of our electoral processes and the purity of our form of representative Government where the members of

1 legislature are responsible to you, to voters, not to some
2 special interest group that just happens to have a lot of
3 money to throw around.
4

5 Let me just pause momentarily ladies and gentle-
6 men.

7 In contrast to what I told you the case would
8 be about in my opening, and which I submit to you the Govern-
9 ment has overwhelmingly proved, with what Mr. Thomson told
10 you the case is all about and what they contended they would
11 prove.

12 As I recall and having had my recollection re-
13 freshed by going through that opening, Mr. Thomson told
14 you this was a case about dairy cooperatives. He then pro-
15 ceeded for approximately 15 minutes to tell you what dairy
16 cooperatives were; that they had members, that they had
17 boards of directors, that they were organized in dairy
18 States.

19 Ladies and gentlemen, what has that got to do
20 with this case? Absolutely nothing.

21 He then proceeded, ladies and gentlemen, to tell
22 you that this case had something to do with Senator Humphrey's
23 long career as an elected official. He told us that
24 Senator Humphrey was elected to the office of the Mayor in
25 1947 of Minneapolis, in 1949 he went to the Senate and he

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2 was reelected and reelected and reelected and he just went
3 on and on.

4 Ladies and gentlemen, that has nothing to do
5 with this case.

6 He then went into a long biographical sketch
7 of the defendant's background. Ladies and gentlemen, that
8 has nothing to do with this case either, except to the
9 extent that this man, Jack Chestnut was a lawyer who
10 Senator Humphrey said he picked for his campaign chairman
11 because he knew the campaign laws.

12 Ladies and gentlemen, what Mr. Thomson was doing
13 in his approximately 30 or 40 minute opening, contrasted
14 against the Government's seven minute opening, was to draw
15 your attention away from the very simple facts of this case.
16 What he was doing ladies and gentlemen in discussing all of
17 these irrelevant matters was creating a smoke screen behind
18 which the defense hopes to hide the simple facts that lie
19 on this table and came from the mouths of the witnesses.

20 Now, the biggest smoke screen in this case,
21 ladies and gentlemen, is TAPE, T-A-P-E, Trust, Agricultural,
22 Political Education. It has no place in this case, ladies
23 and gentlemen, but let me very briefly tell you what TAPE
24 is. I am sure you know, bear with me.

25 Tape very simply was a political arm set up by

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2 dairy cooperative Associated Milk Producers, Inc. to make
3 legal political contributions and there is nothing wrong
4 with those kinds of contributions. The facts in this case,
5 ladies and gentlemen, however, show that TAPE never made
6 any political contributions to Senator Humphrey's 1970
7 Senatorial campaign. The proof, ladies and gentlemen, is
8 contained in Government's Exhibit 5, which is in evidence.
9 You will recall that Mr. Lilly testified that on all
10 occasions, with one exception when TAPE made a contribution,
11 it was by check, it was receipted for and the contribution was
12 reported to the United States Congress.

13 Ladies and gentlemen, these are the reports to
14 the United States Congress. If you could find Senator
15 Humphrey's name in here acquit this man, it is not there.
16 There wasn't any TAPE contribution.

17 Let me spend about ten minutes with you just
18 going through the very simple facts in this case, facts,
19 ladies and gentlemen, which are uncontested because you will
20 recall, ladies and gentlemen that the defendant, when he
21 took the stand, took the stand and doesn't remember anything.
22 He doesn't remember the invoice, he doesn't remember the
23 letters that he signed. He doesn't remember the letters
24 that he received, but he does remember two items. Two cru-
25 cial items. He remembers he never saw those checks. Ladies

1 and gentlemen, is that credible, truly credible, that he
2 could not remember anything but the two checks not having
3 seen them? I suggest to you ladies and gentlemen that it
4 is not.
5

6 Let's look at this case, where did it start, where
7 did it start. It started in February of 1970 when Mr.
8 Barry Nova, who testified, was contacted, by of all people,
9 a man by the name of Connell and I am sure you remember his
10 name. He was invited to come out to Minnesota to advise
11 the Humphrey campaign of certain advertising services that
12 they wished to obtain. He came out, met with Mr. Chestnut,
13 Mr. Connell and Mr. Sherman. An informal agreement was
14 reached that Lennen & Newell would provide the services.
15 Mr. Nova returned to New York, prepared and submitted an
16 outline of what they were going to do and also he said, I
17 believe, that there was a general letter or something like
18 that, in which he said what the fees would be. I think he
19 testified it was about \$72,000.

20 Let me pause for a minute. On any factual
21 matter I mention to you, remember it is your recollection
22 and if you have any question ladies and gentlemen, you can
23 always go to the transcript because every word that has
24 been said in this trial has been taken down and it can all
25 be read back to you if you want.

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2 Early on in the campaign after an agreement
3 was reached and an understanding had that Nova would send
4 the monthly bills to Mr. Chestnut, Nova reached a phone
5 call. A phone call from Mr. Chestnut. Nova's recollection
6 wasn't positive. He said it might have been in a face to
7 face meeting, but he thought it was a phone call. The
8 conversation was very brief. Mr. Chestnut told him that
9 the campaign funds were not coming in and he instructed him
10 to send the next monthly billings to AMPI, Associated
11 Milk Producers, Inc., Incorporated.

12 Mr. Nova, not being familiar with the defendant,
13 assumed, because he assumed the defendant would never do
14 anything illegal, that this was a fund. He didn't know. He
15 is not a lawyer. Certainly not a lawyer versed in dairy
16 matters as it has been testified that this defendant was
17 by his own character witnesses. He had the invoice prepared
18 and they were sent. The first invoice, ladies and gentle-
19 ment, Government's Exhibit 1 in evidence, states quite
20 simply, addressed to Associated Milk Producers, Inc. care
21 of Bob Lilly, New Ulm, Minnesota. It is a charge for con-
22 sulting fee for Minnesota.

23 Before that invoice was received by Mr. Lilly,
24 you will recall, he testified that he had a conversation
25 with Harold Nelson at which Nelson said, you will soon be

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2 receiving a bill from a Lennen & Newell, pay it, get ahold
3 of Chestnut.

4 Shortly after receiving this bill, Mr. Chestnut
5 contacted Mr. Lilly. He told him not to pay it. I suggest
6 ladies and gentlemen, the reason he told him not to pay it
7 was because on its face it is \$12,000. A 12,000 check
8 exceeds \$5,000.

9 In any event, he told him not to pay it and Lilly
10 didn't pay it.

11 Shortly after that, a confirming letter from Mr.
12 Chestnut to Mr. Lilly. That, ladies and gentlemen, is
13 Government's Exhibit 6 in evidence, which the defendant
14 concedes, or his counsel conceded when our handwriting man
15 was on the stand that he signed. That letter, ladies and
16 gentlemen, states, and I will just read a portion of it,
17 the bill that I was going to forward to you did not arrive
18 in proper form and I returned it for proper editing and
19 will return it to you as soon as received. This confirms,
20 ladies and gentlemen, exactly what Lilly told you 100 per
21 cent and ladies and gentlemen, you can't impeach a document.

22 Shortly after receiving this letter, a second
23 letter was received from Mr. Chestnut and that ladies and
24 gentlemen is Government's Exhibit 7 in evidence. That
25 letter dated May 12 very briefly states, enclosed is the

1 correct billing for Lennen & Newell, Inc. Please return
2 the check to us and we will forward it to Lennen & Newell.
3 The defense concedes that the defendant signed this letter
4 also and ladies and gentlemen, it clearly indicates who
5 it is to be paid to, payable to -- Mr. Lilly testified that
6 was on there when he got the bill. That is where the dis-
7 guise and scheme starts, right there.
8

9 Lennen & Newell was paid by Associated Milk
10 Producers, Inc. Nobody would ever know about it, or ever
11 be able to tell in the ordinary course of events that that
12 was an illegal contribution because nobody would look for
13 it.

14 On the other hand, if AMPI had sent a personal
15 check \$12,000 to Mr. Chestnut, he couldn't have kept it.
16 It would have been illegal.

17 Shortly after Government's Exhibit 6 was received
18 by Mr. Lilly, Mr. Lilly caused to be prepared two checks,
19 Government's Exhibits 3 and 4 in evidence. Each of those
20 ladies and gentlemen, accompanied by a covering letter, was
21 sent in accordance with Mr. Chestnut's directions, to Mr.
22 Jack Chestnut, the law firm of Chestnut Jones, Brooks,
23 Calvey and Burkhard, Attorneys at Law.

24 We know, ladies and gentlemen, shortly after that
25 the checks found their way to New York. There is no ques-

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2 tion about that. Mr. Nova testified his bank was Bankers
3 Trust. You will recall Mrs. Rupert, the last witness yes-
4 terday. She identified that the checks had indeed been
5 deposited in the bank account of Lennen & Newell in New
6 York City.

7 Ladies and gentlemen, there is no question in this
8 case, there can't be any question in this case that Mr.
9 Chestnut caused Lennen & Newell to receive on behalf of
10 the Humphrey campaign an illegal export contribution.
11 Ladies and gentlemen, it is illegal on its face, on its face.
12 Look at these checks. Associated Milk Producers Inc. and
13 I am sure you understand that while the Harvard law graduate
14 is not so sure what Inc. means, the rest of you know it is
15 incorporated, it means a corporation.

16 That is all there is to this case. There is
17 nothing else in this case, except as to the question of
18 wilfulness. Before I get to that ladies and gentlemen,
19 let me very briefly offer the witnesses, just talk a little
20 bit about the witnesses because ladies and gentlemen, you
21 have to decide this case on the facts. You have to decide
22 who of the people who appeared on that stand were telling
23 the truth. How do you do that? It is very simple. You
24 saw them testify. You saw their demeanor, you saw how they
25 testified.

1
2 Did they give answers that were responsive to questions put
3 to them? Were they nervous or did they quickly give the
4 answer. Were they able to answer all the questions put to
5 them? Were there times when they were caught up, caught
6 short? I submit there was one case here where somebody
7 was caught very short, ladies and gentlemen and that man is
8 sitting right there.

9 Let's look at the witnesses and see if I can
10 guide you as to who of those witnesses was telling the truth.
11 Let's start with Mr. Nova. Mr. Nova -- first of all, does he
12 have any motive to lie, Mr. Nova? None, Absolutely none.
13 He did what he was told. He didn't know it was illegal.
14 He wasn't a lawyer and he told you very simply that Mr.
15 Chestnut directed him to do this. The documents corroborate
16 him 100 percent. His testimony is unassailable. You would
17 have to close your eyes to reject it, and your ears.

18 We come to Mr. Lilly, because those are really
19 the key witnesses, Mr. Nova, Mr. Lilly and of course the
20 defendant when he took the stand.

21 Let's look at Mr. Lilly.

22 Mr. Lilly was in the business of making illegal
23 corporate contributions. He made illegal corporate contri-
24 butions to Senator Humphrey's 1968 campaign. He testified
25 about it freely. He was not hiding anything from you. He

made illegal contributions to President Nixon and we know they were illegal because we know what happened there.

You heard it testified that he has immunity from prosecution and one might say, well, he can say anything he wants. Well, let's go over the circumstances as to when and how he got that immunity.

You will recall that he testified in October of 1973 on his own, not under a court order, not by subpoena, not by threat. He went through his files at Associated Milk Producers and reproduced the documents that you see before you and many others he said. On his own he went to the Special Prosecutor's Office, he walked in and as he testified, he said here they are and he wasn't promised a thing as he testified.

He had no immunity, and he talked to them and he could have been prosecuted. Later on he was given immunity.

Let's think perhaps for a minute of what he did, what service did Mr. Lilly perform for the United States. Ladies and gentlemen, he exposed a scandal which rocked this country. That is why he was immunized. You have to have somebody to testify to it. Once your man comes in and you get the stuff from him, you are not going to turn around and prosecute him. Isn't it better ladies and gentlemen, to give one man immunity and get a lot of other people? To

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2 weigh it on the scales. In any event, ladies and gentlemen,
3 whether immunized or not immunized, everything there Lilly
4 told you is corroborated by the documents prepared by and
5 signed by that man, Jack L. Chestnut.

6 Those two witnesses, ladies and gentlemen, are
7 basically the witnesses on the main transaction, the trans-
8 action for which this defendant is on trial. There were
9 other witnesses, document witnesses to prove that checks
10 in fact were deposited in the bank and mainly Mr. Lilly and
11 Mr. Nova.

12 There was another witness too, ladies and gentle-
13 men, and this ladies and gentlemen gets us into an area
14 which I mentioned in my opening, I think I said to you,
15 you will find that the defendant engaged in two acts after
16 the events charged in the indictment occurred. Those were
17 basically that he destroyed records and that he gave
18 patently false exemplars to the FBI, for the obvious pur-
19 pose of making it impossible for them to determine who
20 signed those documents.

21 Let's go to the first transaction and who testi-
22 fied to that?

23 Well, I guess you have to think back. That was
24 testified to in two different ways. Penny Miller, who is
25 Penny Miller? Ladies and gentlemen, Penny Miller is Mr.
Chestnut's secretary of nine years. She is the office

manager of the law firm of Chestnut, Brooks, et cetera.

She is a close personal friend. She was subpoenaed to appear before a Federal Grand Jury in the District of Columbia and she refused to testify at first. She was immunized and what did she testify to? Ladies and gentlemen, on the first day of her testimony, she was asked some questions by Mr. Gallis, I think his name was, the man who was the special prosecuting attorney, about whether there had been any conversations between she and Mr. Chestnut at the time certain records were destroyed and if you will recall her testimony yesterday, she testified the first day in the grand jury that she didn't recall any conversations. The next day she came back into the grand jury and on her own, because you must remember, ladies and gentlemen, when she was under immunity, there was only one thing she could be prosecuted for and that one thing ladies and gentlemen is perjury. That means not telling the truth.

So she came into the grand jury and on her own explained to Mr. Gallis and to members of the grand jury, that she wanted to clarify her testimony of the previous day because between the first time she appeared and her appearance on the second day, she had had a discussion with her lawyer and she and her lawyer had gone over notes that he had taken when he had interviewed her about the matter for

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2 which she was appearing before the grand jury and having had
3 that conversation with her lawyer, she testified that yes,
4 now she remembered that she had told her lawyer about a
5 conversation which she had not told to the grand jury on the
6 first day.

7 Ladies and gentlemen, when she came back to the
8 grand jury on that second occasion, and I will read this
9 because, ladies and gentlemen, it is priceless.

10 Government's Exhibit 16. She stated:

11 "The other item that it concerned as when Mr.
12 Farvey was asking me about any conversation when we were
13 throwing away the records and clearing up the records. Mr.
14 Farvey asked me very specifically if there were any conver-
15 sations relating to the Senate Watergate investigation and
16 when I talked to Mr. Farvey", and you will recall he was
17 her attorney, "and in just trying to recall the things that
18 happened, he asked me the same thing and he went over his
19 notes of what I had told him and the circumstances were, you
20 know, it was easier talking to him and having time, you
21 know, to remember under better circumstances or easier cir-
22 cumstances. There was at least one conversation that I
23 had specifically been able to recall when I talked to him
24 and Mr. Chestnut had said to me something," and remember
25 this is when they were throwing the records out, "And I am

2 not sure it is an exact quote, it has been a while. There
3 was a reference made to the Watergate investigation. The
4 reference was something like, This is Mr. Chestnut speak-
5 ing through Miss Miller, "You know, I don't think there
6 is anything damaging in there. I haven't looked through
7 them."

8 Let me stop there. You recall ladies and
9 gentlemen the testimony of Mr. Chestnut on the stand this
10 morning when he was read his testimony before the Senate
11 Select Committee in which he said he personally looked
12 through the records. Somewhat of a conflict.

13 To pick up ... "I haven't looked through them.
14 I don't think they, meaning the Watergate Committee, I
15 don't think they could do me any harm with them, but,
16 you know, let's get rid of them anyway. We don't need to
17 keep them. I am not doing anything illegal by throwing
18 them away and then they won't have them anyway."

19 Ladies and gentlemen, self-serving nonsense.
20 Sure he might have called his lawyer about throwing away
21 his records. Do you think he told his lawyer, ladies and
22 gentlemen, what was in those records and why he wanted to
23 throw them away? If he did, I can assure you that that
24 attorney that testified on the stand would not have told
25 him to throw them away. No, ladies and gentlemen, I said,

Mr. French, I have these records, I want to get rid of them. Mr. French said all right, fine, go ahead and out they went and only two people knew why they went out, Mr. Chestnut and Penny Miller.

Now, however, you will recall yesterday on that stand Mrs. Miller's recollection was very, very hazy. She no longer remembered the conversation. She no longer remembered when it occurred. Ladies and gentlemen, you heard her testimony. When was the first time, and let me go back, you will recall that she testified she was in the office of the U.S. Attorney of Tuesday of last week at which time she repeated what appears in the grand jury testimony of what she remembered.

Following that ladies and gentlemen, the testimony will show she returned to Minneapolis and then on Saturday morning, ladies and gentlemen, two days before the start of this trial, Mrs. Miller's memory changed. Ladies and gentlemen, if you find that credible, then you ought to acquit this man, you really ought to, because if her recollection can be better today than it was six or seven months ago, she is better than anybody in this courtroom. Her motive ladies and gentlemen, for what I suggest to you, was patently false testimony in which the evidence establishes what is obviously her relationship with Mr.

1 Mr. Chestnut. He is an has been her boss for years. She
2 works for him. She is not going to come in here and testify
3 against him. She suddenly realized on Saturday morning that
4 this case was going to trial and she had to change her
5 testimony.
6

7 Ladies and gentlemen, the grand jury minutes
8 that I read to you are inevidence and the Judge will charge
9 you that those minutes, what she said there, may be taken
10 by you just as if she had said those things on that stand
11 and not changed her testimony. You will have to determine
12 which version of her testimony is the truth, what she said
13 in the grand jury when she was immunized or what she said on
14 that stand.

15 Ladies and gentlemen, I put to you a request.
16 When Mr. Thomson gets up here to sum up, I ask you to
17 challenge him to explain why Penny Miller would give the
18 testimony she gave in the grand jury under immunity if it
19 wasn't true. Ask him to give you a logical explanation. I
20 submit to you, ladies and gentlemen, there is none and he will
21 not have one.

22 We now come ladies and gentlemen to the second
23 act and this ladies and gentlemen has nothing to do with
24 testimony of witnesses. All it has to do with is using your
25 eyes. That ladies and gentlemen, very simply, are the

signatures of Mr. Chestnut taken by the FBI. Signatures to be used for the comparison on the documents in evidence. Government's Exhibits 6 and 7.

Before I go into these exemplars of his signature, let's go into the background, a little background.

Do you remember Agent Henwood, the FBI man. He testified he was from Minneapolis. Do you remember that he testified that in October, I believe it was, he had two copies of the letters, Government's Exhibits 6 and 7 which he Xeroxed and gave to counsel for the defense. A month later he came back to get the exemplars, these writings for Mr. Chestnut.

Ladies and gentlemen, I am going to ask you to take these into the Grand Jury, to take Government's Exhibit 6 into the jury room, not the grand jury, the letters which counsel now admits, and admits once we called the expert, were signed by Jack Chestnut and compare them ladies and gentlemen, with what Mr. Chestnut purported to be his signature "Jack" when the FBI asked for it. Ladies and gentlemen, they are fraudulent on their face. They are designed ladies and gentlemen or were designed to prevent the truth in this case from ever coming out. I suggest to you, ladies and gentlemen, it is a reasonable inference that those letters which the FBI delivered in October might

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well have been viewed by Mr. Chestnut between that time
and the day the FBI came and said could we have your signature, please.

Ladies and gentlemen, from both of those acts, the destruction of records and the giving of false exemplars may be taken by you as evidence of consciousness of guilty because, ladies and gentlemen, the general rule, an innocent man does not destroy records, give phony documents. He just doesn't do it. Ladies and gentlemen, the guilty do those things so they won't be caught, so they will avoid the day of judgment which in this case is shortly at hand.

Let's turn very briefly ladies and gentlemen to what I described in my opening, as a course of conduct on the part of the defendant from which you would be able to find a wilful violation of the statute in question. Referring first to Government's Exhibit 10 in evidence, the \$10,000 check payable to the Minnesota Democratic Campaign Committee. If my recollection serves me correct, Mr. Lilly was instructed by Mr. Nelson to get \$10,000 for the Humphrey campaign, contact Chestnut, make the arrangements.

Then you will remember Mr. Lilly went out and he borrowed it and you remember that borrowing and the pay back scheme with the lawyers.

1 He went out, borrowed the money, then he called
2 Mr. Chestnut and what did he say to Mr. Chestnut? Did he
3 say Jack, I have a TAPE contribution for you. No, ladies
4 and gentlemen, he called Mr. Chestnut and said I have an
5 AMPI contribution for you. How do you want the check made
6 payable? He said make it payable to the Minnesota Democra-
7 tic Campaign Committee and here it is.

8 Ladies and gentlemen, I suggest to you and have
9 suggested to you notwithstanding the testimony of our
10 friend from Harvard, that the check on its face is illegal
11 because it exceeds \$5,000 and it went to the campaign com-
12 mittee in connection with an election of Senator Humphrey
13 for a Federal office, not a State office, but a Federal
14 office.

15 That is the second smoke screen in this case,
16 that these are illegal on their face.

17 What else can we say about this check? Can there
18 be any question that Mr. Chestnut saw this check? There can
19 be no question because Government's Exhibit 6 in evidence,
20 thank Mr. Lilly for having sent it. Shortly after this
21 check was sent, Government's Exhibit 10, the Lennen & Newell
22 checks were sent. Again to Mr. Chestnut and I take it
23 ladies and gentlemen, Mr. Chestnut can read. He has a
24 long background. He is a lawyer. He knows all about the law
25

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2 of dairy cooperatives. Shortly after the Lennen & Newell
3 payments -- not shortly after, contemporaneous with the
4 last Lennen & Newell check, was Government's Exhibit 11.
5 You will recall that Mr. Chestnut initiated this conversa-
6 tion himself. He called Mr. Lilly from San Antonio and said
7 "I need \$1450 for a bill." He got it. Ladies and gentle-
8 men, he also told Mr. Lilly to make it payable to the same
9 committee.

10 Ladies and gentlemen, if the first check on its
11 face which exceeded \$5,000 was illegal, any other check
12 drawn by the same person to the same committee compounds
13 the illegality of the first.

14 Let me pause here. Mr. Chestnut took the stand
15 in this case. He testified he was a lawyer, been practicing
16 law for many years, he had his own law firm and I sort of
17 was jokingly went through with him what we have to go to in
18 school to get here and he said he had taken courses in
19 trusts and he had a law firm in which they did trust work.

20 What is a trust? It is special funds set aside
21 for a specific purpose. You don't commingle funds. You
22 don't mix law firm funds with trust funds. They are separate
23 just as the funds were of TAPE as Mr. Lilly testified to,
24 they were totally separate. TAPE made a payment by check,
25 a TAPE check, T-A-P-E on the check. I don't see any of

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those here, ladies and gentlemen. That is because there
weren't any used in this case.

But, ladies and gentlemen, being a lawyer for Mr.

Chestnut, to get on that stand and say to you without blinking an eyelash that he thought this check came from. TAPE, ladies and gentlemen, the evidence suggested is just ludicrous. This is a personal check. The trust fund checks or TAPE checks are paid by a trustee. And those checks always indicate that they come from a trust. You cannot draw a personal check, ladies and gentlemen, on a trust account. So, ladies and gentlemen, this check in more ways than one was on its face suspicious. Minnesota Democratic Campaign Committee, in excess of \$5,000. The very nature of the check itself, personal check, Bob Lilly, was also suspicious, because the defendant was told it was AMPI funds, corporate funds.

But it doesn't end there, ladies and gentlemen. There is in October an additional \$12,500 in cash paid, personally handed by Mr. Lilly to Mr. Chestnut. Now, ladies and gentlemen, as I have repeatedly stated, Mr. Chestnut is a lawyer. People who have testified for him, character witnesses, have testified he is a good lawyer. Ladies and gentlemen, if he is a good lawyer, looking at these checks, getting this money in cash, didn't he have an inkling that something was wrong and didn't he have a duty to look behind it? I suggest to you, ladies and gentlemen, that anybody working in a campaign under the circumstances shown in this

case would have looked behind those checks, unless he wanted to close his eyes and say, "I didn't see anything; I didn't say anything; I didn't see anything," and that is what this man's defense is, "I didn't see anything; I didn't know anything; ladies and gentlemen, I am a good guy."

Ladies and gentlemen, the facts establish the contrary proposition.

Now, let's look very briefly, ladies and gentlemen, before I sit down to the defense witnesses. While we have already discussed or I have already discussed with you Mr. French, I don't think it is necessary that I discuss his testimony with you any further.

Jennifer Broome testified. Who is Jennifer Broome? Well, like Penny Miller, she works for Mr. Chestnut. Why wasn't ^{there} somebody, just one or two witnesses that are not tied in with Mr. Chestnut, whose employment does not perhaps hinge on what they say on that stand, just perhaps. Ladies and gentlemen, that is because there is not any. They came in and they testified about this, that and the other thing. They never got to the issue in this case, and that issue goes back to the checks. And his knowledge is established, ladies and gentlemen, by the prior course of dealings.

Ladies and gentlemen, you are going to be charged as to other acts, the \$10,000, the \$1450, the \$12,000, you

2 can only consider those, ladies and gentlemen, for one pur-
3 pose - but it's a very important purpose in this case - that
4 he knew when he was doing this transaction, the others were
5 illegal, and from that, ladies and gentlemen, he knew that
6 the whole thing was illegal, and he closed his eyes. That is
7 the best that can be said for what he did. He closed his
8 eyes. The worst is that he had them wide open and he did
9 it, anyway. I suggest to you, ladies and gentlemen, the
10 latter is probably more accurate than is the former. I really
11 can't think of anything else to say on that. It's a simple
12 case, simple. Get rid of TAPE. It has not got a darn thing
13 to do with this case. Mr. Thomson is going to get up here
14 and tell you it has everything to do with this case, and I
15 suggest -- it's only a guess, but he will spend a good part,
16 maybe half of his summation on TAPE.

17 Ladies and gentlemen, I told you what you had to
18 know about TAPE from the evidence. I have gone over it. Now
19 I want you to forget everything I told you; make believe you
20 don't know of that TAPE, because it has nothing to do with
21 this case; consider the evidence here; consider particularly
22 the defendant's own testimony, and when the time comes for
23 you to go to the juryroom, consider all the evidence in the
24 case, and you will have absolutely no problem of reaching a
25 just verdict, and a just verdict in this case, ladies and

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2 gentlemen, is only one -- the evidence in this case compels
3 it, a verdict of guilty, for the evidence in this case, ladies
4 and gentlemen, presented by the government establishes over-
5 whelmingly this man's guilt, and not merely, ladies and
6 gentlemen, as the government is required to do beyond a
7 reasonable doubt.

8 THE COURT: Before we hear the defense summation,
9 I suggest we take about a five or seven minute recess and
10 then we start.

11 (Recess.)

12 (Jury in box.)

13 THE COURT: Mr. Thomson, please watch your time,
14 please.

15 MR. THOMSON: May it please the Court, counsel,
16 members of the jury: The prosecution's case unfolded here on
17 Monday and Tuesday, and that coupled with the presentation
18 that you just heard from the prosecutor, has got to be the
19 most dramatic example that I could possibly imagine of why
20 under our American system of justice we have a presumption of
21 innocence. You will never see a better demonstration anywhere
22 of why under our American system of justice we do, indeed,
23 have a presumption of innocence.

24 The prosecutor said to you that I will spend half
25 of my time talking about TAPE. Ladies and gentlemen, I am

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2 going to spend half of my time talking about something that
3 the prosecutor did not dare talk to you about, and that is
4 the law.

5 MR. BANNIGAN: Your Honor, I am going to object if
6 he is going to go into the law.

7 THE COURT: The instructions as to the law is for
8 the Court.

9 MR. THOMSON: I can argue the law.

10 THE COURT: No, you stick to the facts. I will
11 instruct the jury as to the law.

12 MR. THOMSON: Every case that is tried under our
13 American system of justice is tried under certain principals
14 of law. The principal of law that this case is tried upon
15 is this, that the act is not, unless the mind is guilty.
16 And what you have got to come to a grips with is this issue:
17 Has the prosecution proven beyond a reasonable doubt that
18 Jack Chestnut intentionally, willfully, and knowingly violated
19 the election laws by causing AMPI to make a political contri-
20 bution to Lennon and Newall? What was in his mind?

21 Now, in order for me to consider that issue, to
22 see whether or not the prosecution has met its burden of
23 proof, it is going to be necessary for me to make certain
24 comments regarding the evidence in this case. But, as you
25 know, ladies and gentlemen, you as the jury are the sole and

1
2 exclusive judges of the facts. So should I make any comment
3 about the evidence that should in any way not square with
4 your memory, then you disregard what I have said and rely
5 entirely upon what your own recollection dictates to you,
6 because, again, you and you alone are the sole and exclusive
7 judges of the facts.
8

9 On the other hand, it is going to be necessary that
10 I make certain comments regarding the law. As you know,
11 his Honor, Judge Weinfeld is the sole and exclusive judge of
12 the law in this case. Should I make any comment about the
13 law during my comments to you that is in any way different
14 from what Judge Weinfeld tells you what the law is, disregard
15 what I have said and take the law exactly as he gives it to
16 you.

17 Now, before we consider the issue of whether or not
18 the prosecution has met its burden of proof, I feel that there
19 are certain fundamental concepts that each and every one of
20 you has in the forefront of your mind before you consider that
21 issue. I think it is important that you as you sit here
22 today have some realization of what your duties are as jurors
23 in a criminal case under our American system. Secondly, I
24 think you should have a pretty keen understanding of what
25 a criminal prosecution under our American system means. I
think you should have a pretty good idea of the law and the

facts, the facts that are gleaned from the decent and believable evidence in this case.

It is my intent to consider each of these in the order that I enumerated them in my summation to you. I know most of you perhaps have sat on juries before. And when you came in here Judge Weinfeld gave you his preliminary instructions. He indicated to each and every one of you that Jack Chestnut, as any other citizen charged with a crime, is presumed to be innocent of that charge. I think you understand under your oath you said you would not have any trouble giving this presumption of innocence. Here is what happens when you walk into a courtroom. An indictment is read and it is couched in very strong, accusatory language. There is not a presumption of innocence, ladies and gentlemen; there is an aura of guilt.

MR. BANNIGAN: Objection.

THE COURT: I am going to say that is not a correct statement of the law. I am going to ask you to please refrain from discussing principals of law. That is my function, to instruct the jury. I have instructed the jury to start with that the defendant is cloaked with a presumption of innocence and it is there throughout the trial, and you are stating otherwise now.

MR. THOMSON: Ladies and gentlemen, what has

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2 happened in this case is the prosecution has attempted to
3 plant in your minds a seed of suspicion. They have not come
4 forward with what is known as evidence which constitutes proof.
5 They talk about a smoke screen, but they are the ones who
6 came forward to plant the seed of suspicion. Let me say this
7 about suspicion, that you got to be very, very, very careful
8 when you start considering the evidence in this case. You
9 see, when someone is accused of doing something, this can
10 have the tendency of causing suspicion, and suspicion is a
11 very, very strangething. In fact, sometimes it has been
12 called an intellectual dye, that is, it colors everything it
13 comes in contact with. Once your mind is conditioned that
14 someone has done something wrong, what are innocent acts you
15 torture into acts of guilt. Someone can condition your
16 mind, someone out in the street is intoxicated, that seed
17 of suspicion is planted, then when that person does anything,
18 such as inadvertently stumbling, you say that that is a sign
19 of intoxication. So what may be complete innocent acts, when
20 the seeds of suspicion are planted, those acts then become
21 more, ladies and gentlemen, they become evidence which you
22 torture into evidence of guilt.

4-3 23 Now, I claim that the prosecution's entire case is
24 nothing but attempts to plant seeds of suspicion and torture
25 completely innocent acts into acts of guilt. Remember this,

let's start out from the beginning, what is Jack Chestnut charged with having done? He is charged with one thing and one thing only, and that is having caused these checks to issue knowingly and intentionally, knowing that these checks were corporate funds and with such an intent that he knowingly and willfully wanted and caused an illegal act. It is not that he was careless or reckless or negligent, that is not the case. The case is here, did he intentionally cause a corporate contribution to be made. The problem the prosecution has, of all the types of evidence you have heard here, ladies and gentlemen, there is not one shred of evidence, in this case that Jack Chestnut ever handled, ever saw, ever disposed of, and ever exercised any dominion whatsoever over these checks. The prosecutor will have another opportunity to address you, and I will defy him to tell you what evidence that he has that would in any way establish that Mr. Chestnut ever knew about or handled these checks.

He speaks of documents and says the documents speak for themselves. In considering that, ladies and gentlemen, what documents speak for themselves, I want you to consider this. I think this is very important, because there is what is so-called circumstantial evidence, trying to infer one fact from another fact, and I will demonstrate this in a very short story. This is a story that took place many years

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2 ago. This is where a ship went to sea and the first night
3 out the first mate gets on board and he is intoxicated, and
4 the captain writes in the log, "First mate drunk tonight."
5 And from then on they went to sea and they are out for about
6 a year, and during that entire year the first mate did an
7 exemplary job, really, a top sailorman, and the captain admitted
8 it. So they are ready to come back after a year at sea, and
9 the first mate went to the captain and he said, "Do you think
10 I did a good job?" The captain says, "The best I have ever
11 seen." The mate says, "I got a blemish on my record, the
12 first entry in the log, 'first mate drunk tonight.' That
13 will prevent me from ever advancing, and because of the great
14 job I did will you consider eradicating that entry?"
15 The captain said, "No, I will not. It is a fact. It will
16 stand."

17 So the last night at sea the first mate stood watch
18 and the last entry he made in the log was, "Captain sober
19 tonight."

20 Now, if the prosecutor were to interpret that last
21 entry as his document, he would say that entry, "Captain
22 sober tonight," meant that the captain was drunk every other
23 night of the voyage. That is the exact approach he has been
24 taking to every one of these documents here in evidence,
25 ladies and gentlemen; he has taken every shred of document

2 and tried to again torture it to his theory.

3 Now, let's look at the evidence. There is not any
4 question that there was the Associated Milk Producers Incor-
5 porated, which was apparently a bonafide milk cooperative,
6 and it was well known and well established. You heard the
7 witnesses talk about it, that they did have a political fund
8 that was legitimate and that it was obtained by taking con-
9 tributions from individual farmers throughout the country.

10 Now, the important thing is that everybody recognized that
11 as AMPI. Nobody talked specifically about an individual fund.
12 In fact, even Senator Humphrey when he spoke here, spoke always
13 in terms of AMPI.

14 The prosecutor says, "Well, would you go and get
15 funds from AMPI?" He says, "Certainly." His mind did not
16 discern, because everyone thought in the broad encompassing
17 generic word AMPI, and everybody knew that they had
18 legitimate funds, they appeared to be a very, very credible
19 and well known organization, and there was nothing to cause
20 anybody any suspicion whatsoever as to the propriety, the
21 legality, or anything else, and there is no evidence in this
22 case up to the time that Jack Chestnut became campaign manager
23 that there was any nefarious activity on the part of AMPI or
24 that there was anything wrong or anything to throw up a flag
25 about.

2 Now, looking at the intent, Jack Chestnut had
3 absolutely no personal gain. He was sought out to become a
4 part of our American political system; he was sought out by
5 the candidates themselves because of his own respectability,
6 because of his own pretensions. You talk about the electorate
7 system and its integrity in this country. What is a greater
8 background to the integrity of our electorate system than a
9 man like Jack Chestnut to come forward and become an integral
10 part of it. And when you take those and try to corrupt the
11 integrity of our system and you grant them immunity, then we
12 all better start thinking twice about where the emphasis
13 should be placed, because nothing is shown whatsoever that
14 when Jack Chestnut took the reins of the Humphrey 1970
15 senatorial campaign that he had any evidence whatsoever that
16 AMPI was not bonafide, legitimate, a completely legal sanc-
17 tioned operation, that everybody knew that they had funds
18 available, that they advertised these funds were available,
19 and they came forward and said that, "We got a commitment,
20 40 or 50 thousand dollars, to your campaign."

4-4 21 Where is Harold Nelson, the general manager of
22 AMPI? Did they contact Jack Chestnut, who has come from an
23 unblemished background, who had never had any contact with
24 them at all? He is the financial manager of this campaign;
25 he is on a part time uncompensated basis. Now, look at it.

1 It is very easy to sit back here in the calm, cool, dis-
2 passionate atmosphere of a courtroom, and someone says,
3 "He should have done this; he should have done that." Even
4 a fool is wise after the fact. We can look back in hind-
5 sight and say, "You should have done this; you should have
6 done that, you should have done this." But you have to under-
7 stand that Jack Chestnut was thrown into a hectic senatorial
8 campaign, trying to run a law practice at the same time.
9 This is a voluntary worker on a voluntary basis trying to
10 help the candidate of his choice. That alone does not excuse
11 him, but you can't sit here calmly and coolly and say because
12 he didn't do this or he should have looked behind it or that,
13 that, therefore, he is a criminal. You have got to look very
14 carefully at each and every transaction.

15
16 Now, the only charge, again, is the causing of those
17 two checks to issue. He knows that the funds are available.
18 In fact, Pat O'Connor, who testified here, who is a lawyer
19 in Washington and Minneapolis, in '70 he was the national
20 treasurer for the democratic party and the Dairy Industry, the
21 co-ops were one of the biggest contributors. But he never
22 heard of TAPE. Lilly says, "I never mentioned TAPE." Nobody
23 mentioned it because everybody when you talked about AMPI
24 thought you were talking about that political fund. That is who
25 Lilly was; he was a political contributor. And when you talked

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2 to Lilly, you would assume you were talking to the man who
3 has the credentials to provide the funds to us.
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2 Was there any reason whatever that Jack Chestnut
3 should have thought that Lilly was acting any way but legal.
4 He makes a commitment 40 or \$50,000 worth of funds are
5 available.

6 What happens? They come to him and these, first
7 of all, we would like to pay some bills for you. There was
8 nothing wrong with that. In fact, if it turned out that
9 these checks in truth and fact were corporate funds, as they
10 ultimately turned out to be, but had in truth and fact been
11 from the political funds which they should have come forward
12 with, there would have been nothing wrong with that trans-
13 action.

14 It would have been a legitimate, bonafide con-
15 tribution to pay a legitimate bill for services rendered
16 for Senator Humphrey. There was nothing wrong with that at
17 all, but who had the motive to disguise this transaction?
18 Remember the 1970 Senatorial race was well funded. We
19 brought the treasurer in here. He said that Humphrey's
20 Senatorial campaign had more money than they really needed
21 so what motive would Senator Humphrey have in trying to dis-
22 guise a contribution? He would have absolutely none. I
23 imagine politicians are looking for more and more money
24 because there are more and more things to do but it wasn't
25 a destitute campaign. There was no motive to disguise the

transaction. Look at the motive. What motive would Jack Chestnut have in causing this type of transaction to go down? There is no way he could possibly profit by it, there is no way his candidate could profit by it, there is no way his party would profit by it. If he had knowledge, it would have been fraught with danger, so why in God's world would Jack Chestnut want to cause something like this to happen if he had no motive for it but there was great motive on the part of AMPI and they told you the motive because Richard Nixon had been elected as President of the United States and they wanted to have an audience, they wanted to have a foot into the White House and they wanted to make contributions to him and to his party and people around him in order that they could have a say, but on the other hand, they didn't want to lose any influence with the other party, so they couldn't very well throw all their eggs in one basket.

What was their motive in doing this? It was exactly so that no mention of Humphrey would appear on the report that they filed in the House of Representatives, prosecution's Exhibit 5. You won't see any contributions to Humphrey on there. You bet you won't and they didn't want any contributions to Humphrey to be shown on there because they didn't want the representatives who were in

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2 power to see how much they were contributing to the Demo-
3 crats. The sole blame lies completely on AMPI and they are
4 the ones that had their fingers on the scales of our elec-
5 torate in this country and make no mistake about it, because
6 if you put the blame on anyone else, you missed the complete
7 point of our system of Government in this country, ladies
8 and gentlemen.

9 This was an organization that was out to feather
10 their own nests. This was an organization that would stop
11 at nothing and they would stop at corrupting no one in order
12 to obtain what they consider perhaps legitimate ends for
13 their own constituency, but the ends that we know do not
14 justify the means and this was the means they employed and
15 it was not Jack Chestnut who caused anything to happen.

16 It was not Jack Chestnut that caused anything to
17 happen. It was AMPI through Lilly and Lilly was the poli-
18 tical arm. He held himself out to be, everybody knew him to
19 be and there is not one shred of evidence in this case
20 that Bob Lilly was known as anything other than the politi-
21 cal arm.

22 Now, there is nothing wrong with the fact that
23 they would pick up \$12,000 worth of billings. It would
24 be more of a legitimate type campaign contribution because
25 you would know as contributor where your funds were going.

2 I would know that the funds I contributed to the Humphrey
3 campaign would go to pay some legitimate advertising bills
4 and there wouldn't be any question that my funds were
5 directed right to that source.

6 Now, there was nothing in that that would cause
7 anyone to perk up and say fine, we will pay the bills.

8 Now, how Lennen & Newell was contacted, and you
9 could look through these exhibits and Mr. Chestnut has told
10 you he looked through these exhibits, he pondered the
11 exhibits and can't tell from the exhibits, exactly recon-
12 struct exactly what happened. He does know he was contacted
13 by AMPI to make some contributions by picking up some bills.
14 He has no exact recollection but there is no question they
15 were contacted and the bills were sent. The bills were
16 here. The bills were sent and then they ended up being
17 paid by corporate funds.

18 First of all, in whose mind was it born that this
19 type of transaction should take place? Was it in Jack Chest-
20 nut's mind or was it in Harold Nelson's mind, the general
21 manager of AMPI. There is no question that is where that
22 idea was nurtured. AMPI had everything to gain by this.
23 They were the ones who wanted to use the subterfuge to avoid
24 the reporting. In fact, they were paying twice as much and
25 they talked about the lawyers scheme that it cost them

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2 \$200,000 to avoid a contribution of \$100,000 so the
3 representatives wouldn't see what they were paying the
4 Democrats.

5 There was testimony that Jack Chestnut would come
6 across a corporate contribution, it would be immediately
7 returned. That is evidence to show a course of conduct.
8 That everybody was instructed under him that if you see a
9 corporate check, you send it back and there is evidence we
10 brought in here, as much as we possible could out in New
11 York, those who made corporate contributions, was returned
12 to them to show that this was an above board legitimate, and
13 as Hubert Humphrey said, a good campaign and clean cam-
14 paign and that is what was run on his behalf.

15 How does this come down? The bills are initiated
16 and they are made out to Associated Milk Producers, Inc.
17 and nobody has ever used the word TAPE and just because you
18 make it out to that, that doesn't make it a corporate con-
19 tribution. This is a mailing address that Bob Lilly who
20 was the political arm of AMPI is using as his mailing
21 address. He uses AMPI and people refer to it as AMPI. There
22 is nothing on the face illegitimate about this. How is this
23 going to be paid? Well, they do pay for the bill, this
24 bill in corporate funds. There isn't any question about it.
25 This was an illegal contribution, exactly what the statute

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2 was designed to prevent, to prevent big corporations and
3 labor unions from getting too much influence in our Govern-
4 ment and this is exactly what they were doing and they
5 were doing it as a subterfuge.

6 How is it that Jack Chestnut is connected with
7 it? Where are any covering letters that these checks were
8 mailed out of the Chestnut law firm or from the Humphrey
9 campaign to the recipients of these checks, which would
10 be Lennen & Newell. There aren't any, ladies and gentle-
11 ment and you could search the exhibits, every exhibit in
12 this case. They have them stacked up, but you will not
13 find among these exhibits one shred of evidence that
14 these checks, these corporate funds went from either the
15 Humphrey campaign headquarters, Jack Chestnut law office
16 or anywhere to Lennen & Newell.

17 Now, we do know this that these checks, because
18 there are covering letters, were mailed to Jack Chestnut's
19 law office. Based upon Jack Chestnut's background, and I
20 ask you this. You heard the reputation in evidence here
21 and I will not dwell on it, and you may ask what is the
22 importance of it.

23 The importance of this, ladies and gentlemen,
24 if any person coming through life to the extent that Jack
25 Chestnut did, and can maintain, develop and maintain a

1 reputation like he has, what earthly good is it if you can't
2 get up in a court of law and tell what happened to you?
3 What good is it for any of us in our lives to gain a good
4 reputation if we can't look our accusers in the eye and say
5 I didn't do it?
6

7 You see ladies and gentlemen, there is no way
8 you can prove you are innocent because you can't prove you
9 did not do something. That is not susceptible of proof. You
10 can't prove a negative. All you can do is deny it. You
11 can't prove you did not do something. We do know because of
12 the character of Jack Chestnut and his other experiences
13 that have been testified to, that had these checks indeed
14 come to his attention and he was indeed aware they were
15 corporate contributions, is there any doubt in your mind
16 he would return them?

17 Would there be any earthly reason that has come
18 to your attention during the course of this trial why he
19 would not return these checks? Have they in any way tried
20 to express to you a motive he would have in not returning
21 the checks? They are talking someone about ambition. Jack
22 Chestnut was one of the most respected lawyers in Minnea-
23 polis. You heard the testimony even of the Senator. He
24 was ambitious. He was doing this for nothing, 25 percent of
25 his time. Isn't it a reasonable inference to believe that

1 if these checks did indeed come to the attention of Jack
2 Chestnut that they would have been returned as he returned
3 other checks that were on their face corporate checks?
4

5 Isn't it reasonable to believe they did not come
6 to his attention and we did dwell for some period of time
7 about the office procedures and he had his two secretaries,
8 Mrs. Miller and Mrs. Broome, who would go through all of
9 the correspondence and they would separate and those things
10 they felt and they had been delegated this responsibility,
11 they would handle those and those that they thought they
12 could bring to his attention they would bring to his atten-
13 tion but what can be more perfunctory and read the corres-
14 ponding letters that encloses these checks and if you were
15 sitting there as a secretary and read the letter, the only
16 thing that was necessary was to forward these checks.

17 That is all that was necessary, because they are
18 not made out to the Humphrey campaign, they are made out
19 to Lennen & Newell on their face. They are legitimate
20 checks to pay a bill but we know better. What happens is,
21 we could only surmise at this juncture because there is no
22 correspondence under anybody's signature sending these
23 checks to Lennen & Newell. These checks can be traced to
24 the Chestnut law office, but there is no evidence he ever
25 saw them. His secretary testified how they handled the

1 mail, so what possibly could have happened, and remember
2 now, Barry Nova and Gross, who were with Lennen & Newell,
3 had a desk around the Chestnut office at the time. They
4 could have picked the checks up themselves and sent it to
5 their home office or one of the secretaries could have stuck
6 it in an envelope and mailed it on.
7

8 This is the type of mail that would be handled
9 perfunctorily by a secretary. This is not the type of mail
10 that would be called to the attention of anyone because
11 there is nothing to do with this particular item other than
12 to mail it on.

13 So, is this. Because the conduct and the habit
14 of Jack Chestnut in returning corporate contributions, the
15 fact that everyone was admonished not to accept corporate
16 contributions, because of his good character and because
17 of his reputation in that regard, and because of his office
18 procedure, it is more reasonable than not that he never saw
19 these and said he never saw them and I am sure that his
20 recollection is fortified in the fact he didn't see it
21 because of the fact he knows in his own mind and his own
22 heart because had he seen them, there is only one thing
23 to do with them and that is to send them to the sender, but
24 they slipped by him, they slipped by him and now they want
25 you to brand him a criminal on this flimsy foolishness,

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2 nonsense. There is nothing and again I ask you to look
3 closely to find if there is anything I may have missed that
4 would in any way establish that Jack Chestnut ever saw
5 these checks.

6 That is their case and that is the only thing for
7 your consideration.

8 Now, the prosecutor talks about smoke screen.
9 They come in with these other checks and I want to make it
10 abundantly clear and I am sure Judge Weinfeld will instruct
11 you clearly on this. Jack Chestnut is not charged with
12 any offense arising out of these checks or the cash con-
13 tribution. The prosecutor tells you they introduced this
14 to show an element of wilfulness. Well, I tell you ladies
15 and gentlemen that these checks and the cash contribution
16 establish beyond peradventure Mr. Chestnut's innocence.
17 Why do I say this? Mr. French testified -- think about
18 this, think how diligent Jack Chestnut was in the opera-
19 tion of the Humphrey campaign in 1970.

20 Remember, he had never been campaign manager
21 before, although he had been active somewhat in politics
22 for a decade since he had been a lawyer but this was his first
23 shot as being a campaign manager for the Senator.

24 He called upon, sought out and got a lawyer,
25 Mr. French, who had great credentials. He is laughed upon

1 by the prosecutor, "That man from Harvard". You saw him
2 testify here, I brought out his credentials and the
3 law firm he came from and the amount of contact he had with
4 political campaigns. Mr. Chestnut sought him out as his
5 legal advisor. Think about this. Chestnut is a lawyer
6 himself taking on the duties of a campaign manager but he
7 was diligent enough to get what he considered the best in
8 the field to advise him and he was advised, and I want you
9 to read this letter, although the letter was directed to
10 Mr. Chestnut when he was campaign manager in the Presidential
11 bid in 1972, that Mr. French continuously gave him the
12 same advice reflected in this letter and the same advice
13 in 1970 and that is this: That the \$5,000 limitation which
14 the prosecution claims makes this illegal, Mr. French said
15 is not illegal as long as it went to a State committee.

16 We have evidence that the Minnesota Democratic
17 Campaign Committee was a State Committee and based upon
18 Mr. French's opinion, was entitled to receive an unlimited
19 amount of contributions.

20 That is what was in Jack Chestnut's mind. That
21 is what he had been advised. No one on the face of this
22 earth can arm themselves with any other better information
23 than that; so Bob Lilly tells you, I will make a contribu-
24 tion, or I will make an AMPI contribution. Fine.

1 The \$10,000 comes up and it is a personal check
2
3 by Lilly but ever structure, every organization in the
4 country is structured differently. There is nothing in
5 here to show it is corporate Bob Lilly. He is the one that
6 is holding himself out as the political arm. As far as you
7 know, you have nothing to arouse your suspicion or to show
8 that this is illegal. It is made out to the Committee that
9 you requested it to be made out to, it is made out in the
10 proper amount. It is the check of Lilly who calls himself
11 the political arm. What peculiar relationship Lilly might
12 have with the political fund itself is of no concern but
13 it is not on the face. The same with the second check.

14 There is nothing to show there was anything
15 illegal about that and when they came in to pay the \$12,500
16 cash, this was to complete their commitment, that they com-
17 mitted themselves to 40 or \$50,000 as he indicated to Mr.
18 Chestnut, this was the \$12,500 to complete that.

19 Is there anything about this transaction that
20 would be open to any type of criticism or scrutiny but for
21 the fact that they draw a bead on these checks here?

22 I say to you that these checks and the \$12,500
23 demonstrate clearly Mr. Chestnut's innocence as regards
24 these two checks here.

25 Now, we talk again about smoke screen. This has

nothing to do -- these checks have nothing to do with this and the Judge will admonish you very carefully, very closely and I tell you to heed his admonition about what weight you could give if any to these other transactions.

Now, the prosecution says we are going to bring in two types of evidence to show that Mr. Chestnut back in May when these AMPI incorporated funds issued, was acting wilful. All I can say is that I thank God Jack Chestnut doesn't beat his dogs. I am sure they would have brought that evidence in as well to show wilfulness. What do they do? They bring in some evidence that he threw out some campaign records. There is no legal requirement whatsoever that he maintain those campaign records and they know that and Mr. French sat here and told you that Jack Chestnut called him, he wanted to seek legal advice, they were cramped for space in the law firm. What earthly good are campaign records after the campaign is over. We called him and he said there is no legal requirement to keep them, throw them out and he threw them out and this was long before there was any Watergate committee.

These were the 1970 records. The Watergate committee, which he read from the transcript, were concerned with the 1972 campaign records when Hubert Humphrey lost his efforts to get the nomination for the Presidential candidate

1 in 1972. This was the 1970 Senatorial Campaign and they
2 are trying to bring in the fact he illegally disposed of
3 1972 campaign records when he was running for President?
4 Where is the connection, the nucleus. It just isn't there.
5 You have to look closely at it because you will be inundated
6 with so much nonsense you are not going to be able to see
7 the clear light and the clear light is, Jack Chestnut had
8 nothing to do with it.
9

10 Then they come in with the granddaddy of them
11 all, the handwriting. Let's look how absurd that is.

12 Number one, Jack Chestnut never disputed that
13 the signature "Jack" on those two letters was his. He
14 just doesn't have any recollection of it but he never dis-
15 puted. He never said that is my signature.

16 Q What they do, they have him going down and give
17 some exemplars. They request these exemplars. He admitted
18 these are the worse possible type of exemplars to give to
19 try to identify a signature because they are usually given
20 under stress and not when a person freely writes his or her
21 own name. This is when you sit down in a room and someone
22 says, "write" and you write in a completely different
23 manner than you would if you were writing freely and con-
24 sciously.

25 They send him down, he gives his exemplars to

the FBI. Nothing happens for months and months and months. Last weekend on the very eve of this trial, they are turned over to McNally and the prosecutor gets up here and he tells you he has these exemplars and we are going to prove that he intentionally deceived. Words to that effect. McNally never said that. The questioned document expert never said that. He never was even asked for an opinion, never even proffered same. He put them up there and they were a lot different. He said they could have been written by two different people but he didn't say in his opinion-- he said they were written more determined, more slowly, more cramped.

Then we flash up another one where Mr. Chestnut must have been in a hurry when he signed it and compare that to his normal signature on another document and there is as much difference between that and this as there is between the normal one and the one given as an exemplar.

How could it possible be the manner and method that we wrote exemplars in the FBI office got to do with whether or not he oversaw those? If you want to sift a man's entire life for every little act he might have done and torture it in because they don't have a case, fine. If they had a case, they could stay a week for the nonsense. They wouldn't have to come in here with this hocus pocus.

1 rke
2 That they throw away letters that they had a
3 legal right to throw it away and they tried to make you
4 think there was something wrong or sinister about it and
5 also the fact he goes in the FBI office and writes his name
6 or they come to him and writes his name.

7 I think probably the one thing in this entire
8 case that characterises it more than anything else and
9 reveals the falsity of the prosecution and that is this.
10 You would you like to be sitting on a witness chair under
11 oath and telling your side what happened and someone stands
12 in front of you, a prosecutor with an official title, and
13 he shouts at you, didn't you take \$5,000 under the table and
14 there is no evidence whatsoever of that, just a bald faced
15 accusation. What can you do? What can you do? Nobody
16 resorts to that type of tactic unless they know they don't
17 have a case.

18 They have been trying every possible way to con-
19 taminate and poison your minds with things that have nothing
20 to do with this case with the theme that here is a guy that
21 does this, this and this. He has to have seen those checks,
22 even though they have no evidence he saw it. They would
23 like you to think because he threw away records when he had
24 a right to, because he wrote slower when he gave some exem-
25 plars, that some prosecutor shouted at him, you will say aha,

1 we will substitute that type of nonsense for proof and you
2 have been invited by the prosecution in this case to do
3 exactly that. You have been invited to substitute foolish-
4 ness, nonsense, unsupported, mitigated allegations without
5 any support to take that and substitute for their lack of
6 proof that Jack Chestnut ever saw those checks, ever had an
7 opportunity to exercise dominion over them, ever did any-
8 thing with those checks whatsoever, and you could sift the
9 evidence here, the documents, the record and you could
10 search it in vain and there won't be one shred of evidence
11 to establish that Jack Chestnut ever saw those checks and
12 he will get up here after I have done and talk about
13 circumstantial evidence and inference on inference and
14 what they are really trying to do is bring in innocent
15 acts, acts of guilty and say we don't have evidence of it
16 here but you just take it.

17
18 It has been a relatively short case and the after-
19 noon is drawing neigh and you are all tired, it has been an
20 arduous day, not only from the evidence that came in but from
21 the arguments of lawyers.

22 They always say that a lawyer really gives three
23 arguments. One he prepares to give and that is the one that
24 he actually recites and the one he gives when he sits down.
25 Of course, the best one is the one when you sit down because

the minute you sit down, you remember something you forgot to say and the minute you sit down, I will remember something I should have told you, so if there is anything about this case that I haven't touched upon, believe me, it isn't because I have ignored it. It is just that I forgot.

As far as the evidence in this case is concerned, and I will close in a very few minutes; somehow when you are talking about, and I am sure the prosecution will talk to you about inferences and circumstantial evidence and so forth, and I am sure the Judge will instruct you tomorrow as to circumstantial evidence, but there is a story that a lawyer in Minnesota tells jurys and I think it is very appropriate for this case and I believe this lawyer is from Bloomington Prairie or some other town in Minnesota and he tells the story of the circumstantial evidence about the farmer, we will make him a dairy farmer, who just loved blueberry pie.

His favorite dish was blueberry pie. This one morning his wife makes a blueberry pie. She took the blueberry pie and put it on the windowsill. The farmer is out in the field and the young neighbor boy goes by and irresistably attracted to the aroma of the blueberry pie, and he sneaks in the kitche with theinten tion of eating just

1 a sliver. He eats the whole pie and he sees the farmer
2 coming along and he sees a puppy dog and he rubs the
3 puppy's face in the pie tin. He runs out. When the farmer
4 comes in, he sees the pie tin and the puppy with the remnants
5 of blueberry on his face. The farmer took the little puppy
6 out in the farmyard and thrashed him and the Minnesota lawyer
7 used to say to the jurys, that is what it means to be con-
8 victed on circumstantial evidence.
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In this case, ladies and gentlemen, AMPI baked the pie and Lennen & Newell ate it. They are trying to rub his face in the pie tin. Only you can prevent that. The only safeguard we have in not convicting the innocent is the good sense of jurors. I am sure you don't need me to tell you what your high duties or high responsibilities are. You don't need me to tell you that the very fate of a young man hangs in the balance in your hands. And, believe me, no greater burden could be placed on you than that.

I only remind you in closing that you notice the diligent court reporters here throughout the trial. They have made a transcript of everything, and if the jury wants to see part of the testimony, you can get it, part of the record, you can get it, so that if I should make a mistake, perhaps someday it could be corrected, if the prosecutor should make a mistake, it could be corrected, and even respectfully if Judge Weinfeld should make a mistake, someday that could be corrected. But when you go into that jury room, ladies and gentlemen, there is not going to be any court reporter there. So if you make a mistake, nobody is every going to be able to correct it. If you return to this courtroom with a verdict of not guilty, I say to you, ladies and gentlemen, it is the only verdict

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2 the evidence cries out for. You do that. Later you will
3 be able to say to anyone you ever meet, "The opportunity
4 came to us to destroy a man, but, instead, we found him
5 not guilty because they didn't prove him guilty beyond a
6 reasonable doubt."

7 Thank you.

8 THE COURT: You may take the balance of your
9 time.

10 MR. BANNIGAN: Thank you. May I have one or
11 two exhibits.

12 THE COURT: It will be another half-hour.

13 MR. BANNIGAN: It will be ten minutes at the
14 most.

15 Ladies and gentlemen, may it please the Court,
16 counsel, Madam Forelady, ladies and gentlemen of the jury:
17 That was a wonderful little analogy counsel came up with
18 about the pie. But he left something out, ladies and
19 gentlemen; he left out what this case is all about. He is
20 right. AMPI cooked it, Lennon & Newell ate it. Ladies and
21 gentlemen, what he left out is that Jack Chestnut ordered
22 it.

23 Ladies and gentlemen, counsel said you go to
24 that jury room and you can't make a mistake. Ladies and
25 gentlemen, on the evidence in this case, from the evidence

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in this case, if you return with a verdict of not guilty you will have made a very serious mistake, because the evidence in this case is overwhelming. Let me very briefly go over just a few of the items the defendant raised in his summation. Why did Mr. Chestnut do this? The contention, the testimony from the defense witnesses has been that the campaign was well funded. Well, ladies and gentlemen, where are the records that would prove that? They could have brought them in. Or could they? One explanation is they went to a poor gentleman who was deceased and he couldn't testify obviously. The other reason, ladies and gentlemen, is because they were destroyed. So isn't it a convenient defense to say, "We were well funded, but, gentlemen, we can't produce the records because I destroyed them," or "Somebody else destroyed them." Very convenient, ladies and gentlemen, but not convincing.

The Government has really been put on trial here by Mr. Thomson. Ladies and gentlemen, the Government is not on trial in this case. The Government has a duty to present testimony to you through its witnesses. The Government does not select its own witnesses; it finds its witnesses and uses them. The Government has acted as it is supposed to act in this case, ladies and gentlemen. Had it not, I am sure that the Government would have been

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2 sat on by a very competent and strong Judge. We were not.

3 Now, the defense has contended that Jack
4 Chestnut would always send back corporate contributions.
5 Ladies and gentlemen, you recall when Mr. Lilly was on the
6 stand they showed him a document to prove that Jack Chestnut
7 would send corporate contributions back, corporate contribu-
8 tions, ladies and gentlemen, as small as a mere fifty dollars.
9 I think there was a check, yes, Government's Exhibit 15 in
10 Evidence, a mere fifty dollars, Jack Chestnut would not
11 keep that check. Ladies and gentlemen, they proved it by
12 the document, and then they sat down. And then, ladies
13 and gentlemen, the Government got up and brought out what
14 this document is all about. Jack Chestnut did not send
15 this check back like they tried to make it appear to you.
16 Penny Miller sent it back; it is signed Jack, signed by
17 PM, Penny Miller.

18 Ladies and gentlemen, you have heard Mr. Chestnut
19 was devoting his time, working for nothing. Is that true?
20 There has been testimony in this court, ladies and gentlemen,
21 that he got paid \$5000 in a most curious, curious way,
22 through Associated Milk Producers. We can look at that
23 in one of two ways. Either way, it establishes this defend-
24 ant is guilty.

25 On the one hand, if, as he testified, he was a

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2 lawyer for AMPI, then his defense that he didn't know that
3 the political fund was separate from AMPI is absolutely
4 ludicrous. He would have to be the most incompetent lawyer
5 that walked the face of this earth. If he wasn't the
6 lawyer for AMPI, there is the other side of the coin, then
7 he personally got \$5000 under the table. And we know,
8 ladies and gentlemen, that the money was not paid directly
9 to Mr. Chestnut, as he admitted, as is the usual course of
10 any business, no, ladies and gentlemen, the money was funneled
11 through a straw man by the name of Connell --

12 MR. THOMSON: I object.

13 THE COURT: It is fair argument based on the
14 testimony.

15 MR. BANNIGAN: -- who worked in some consulting
16 capacity. This funneling of funds has a familiar ring.
17 And what is the other argument? There are so few that have
18 to be answered in the case, that I don't know why I am here.
19 The '72 letter from Mr. French advising Mr. Chestnut with
20 regard to the \$5000 or more --

21 Do you have that exhibit, sir?

22 MR. THOMSON: Probably in front of you.

23 MR. BANNIGAN: So courteous. Defendant's
24 Exhibit E in Evidence, 1972, this letter is dated, ladies
25 and gentlemen. Where is the 1970 letter? Why in 1972 when

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2 there is a discussion about receiving funds of \$5000 or more?
3 Does Mr. French write a letter? Why didn't he write a
4 letter in 1970 when he testified he was asked. Well, he
5 just didn't write a letter. Isn't that very convenient.
6 Ladies and gentlemen, maybe that was destroyed, too. Now
7 they ask, ladies and gentlemen, Mr. Thomson asked quite
8 clearly where is the connection between the destruction of
9 documents and the Senate Watergate Committee coverup and
10 everything. Ladies and gentlemen, it is right here in his
11 own secretary's sworn testimony, and for counsel to have
12 missed that he must have been napping.

13 Now, let's get very briefly to the handwriting
14 man, this big argument about the handwriting man. What did
15 Mr. McNally say? He didn't say it was intentionally fraudu-
16 lent. Ladies and gentlemen, you have to use your own
17 common sense. When you were sworn as jurors in this case
18 nobody said, "Leave your common sense at home and come
19 down here and look at things as if they were in a vacuum."
20 Ladies and gentlemen, Mr. McNally said the exemplars when
21 placed against the true signature of Mr. Chestnut were as
22 if two different people had written them. The conclusion
23 is obvious, to intentionally disguise his handwriting.

24 Great emphasis was placed on the defendant's
25 testimony. He doesn't remember anything; he does not

1 mmds 7

2 remember anything. If only he had some documents he can
3 remember. But, alas, as with all other records, they were
4 destroyed, too. Convenient, very convenient, but again,
5 ladies and gentlemen, totally unconvincing.

6 Ladies and gentlemen, the bottom line in this
7 case is that this man, Jack Chestnut, caused the Lennen &
8 Newell transaction, the illegal transaction. That is what
9 he has been charged with, that he caused Lennen & Newell
10 to receive an illegal contribution, and the evidence as
11 to that is uncontraverted. The defendant does not contra-
12 vert it; he can't remember conveniently. The documents
13 speak for themselves. The testimony is clear. The checks,
14 we know where they went, we know where they came from, we
15 know where they wound up -- in Lennen & Newell. They were
16 sent to his law firm. Neither of his secretaries said they
17 saw them. If they didn't see them, ladies and gentlemen,
18 then he must have.

19 I'm not going to waste you time, ladies and
20 gentlemen, and keep you here for a half-hour or thirty
21 minutes; there is absolutely no point in it. The Govern-
22 ment's evidence in this case is strong. We rely on you
23 to use your common sense; we believe you will. Your
24 collective judgment will come and help you to reach a true
25 and just verdict in this case. You will find, ladies and

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2 gentlemen, when you review the evidence in the case fairly
3 and impartially that the Government has met its burden of
4 establishing this defendant's guilt beyond a reasonable
5 doubt. And again I say, because of the evidence beyond any
6 doubt, the verdict you return will be the appropriate verdict,
7 one based on the evidence, and the evidence will require
8 that that verdict be guilty.

9 Thank you.

10 THE COURT: Members of the jury, before we
11 leave for the day just one word to you: Please remember
12 the case is not over and don't undertake even by your single
13 thoughts any consideration of it. You are still to hear
14 an important aspect of the case, the Court's instructions
15 as to the law to apply. And, again, before we leave, I
16 want to remind you of my original instruction given at the
17 outset of the trial and repeated several times, not to
18 discuss the case amongst yourselves, nor with any person,
19 nor allow anyone to talk to you, and the added instruction,
20 not to read anything about the case, listen to T.V. about
21 it or over the radio, and to the extent that you can, put
22 the case out of your mind. Have a relaxed night. I look
23 forward to see you tomorrow morning. I will ask you to be
24 inside so we can start promptly at 10:00 o'clock.

25 Good night all.

(Whereupon, an adjournment was taken to May 8,
1975 at 10:00 o'clock a.m.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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CHARGE OF THE COURT

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(In open court - jury present)

THE COURT: Members of the jury, we have now reached the point in this trial where you are about to undertake your final function as jurors and here you perform one of the most important and sacred obligations of citizenship -- that is, acting as ministers of justice.

You are to discharge this duty in an attitude of complete fairness and impartiality, appraising the evidence calmly and deliberately and as was suggested by me at the start of this trial, without prejudice or bias with respect to either the Government or the defendant as parties to this controversy.

The fact that this trial was of comparatively short duration in no way reflects its importance. It is important to the defendant who is charged with the commission of a serious crime. Equally it is important to the Government for the enforcement of the criminal laws as a matter of prime concern to the community and its welfare.

Let me add -- the fact that the prosecution is brought in the name of the Government, the United States of America, entitles it to no greater consideration than that accorded to any other party to litigation. By the same token, it is entitled to no less consideration. All parties, Government, corporations and individuals alike

stand as equals at this bar of justice. You are the sole and exclusive judges of the fact. You pass upon the weight of the evidence, you determine the credibility of witnesses, you resolve such disputes as there may be in evidentiary matters and you draw whatever reasonable inferences may be warranted from the facts as you determine them.

My function at this point is to instruct you as to the law. It is your duty to apply these instructions of law, to accept them and apply them to the facts as you may determine them.

With respect to any fact matter, it is your recollection and yours alone that governs. What counsel either for the Government or the defense may have said with respect to matters in evidence, whether during the trial, in a question, in argument or summation, is not to be taken in place of your own independent recollection. So too, anything the Court may say during the course of these instructions with respect to any fact matter again is not to be taken in place of your independent recollection which as I have said governs at all times.

A number of preliminary observations are in order. The overruling or sustaining of an objection whether made by defense counsel or Government counsel is not to be considered by you in any respect. Counsel not only have

1 the right, but it is indeed their duty on the offer of
2 certain evidence to press whatever legal objections there
3 may be to its submission. The lawyers are simply perform-
4 ing a duty on behalf of clients. Whatever testimony was
5 stricken, the reason, therefore, is a matter of law which
6 should not concern you. However, once stricken such testi-
7 mony must be disregarded, ignored and not be considered
8 by you.
9

10 A further preliminary observation. You are
11 not to be concerned that other persons who may appear to
12 be involved in the crime charged against this defendant
13 have not been indicted. This must not enter into your
14 deliberations except insofar as may properly be considered
15 by you in evaluating the credibility of witnesses. The
16 determination of whether charges shall be brought against
17 alleged wrongdoers is a matter to be decided by the United
18 States Attorney and a Grand Jury and the fact that prosecu-
19 tions have not been instituted against any other persons
20 who may or may not be involved permits no inference against
21 the Government and must play no part in your deliberations.

22 Guilt is personal. The guilt or innocence of
23 Jack Chestnut on the charge against him must be determined
24 solely upon the evidence presented against him or the lack
25 of evidence. The case against him stands or falls on the

proof against him and not against someone else.

Before we consider what the Government must prove to sustain the charges, it is desirable to repeat the basic principles of law which apply in every criminal case and to which I made reference at the time of your selection of jurors.

The indictment upon which the defendant is brought to trial is merely an accusation of charge. It is not evidence or proof of the defendant's guilt. He has pleaded not guilty. The Government has the burden of proving the charge against the defendant beyond a reasonable doubt. He does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusation contained in the indictment. This presumption of innocence was in his favor at the start of the trial, it continued in his favor throughout the trial, is in his favor as I instruct you now and remains in his favor during the course of your deliberations in the jury room. It is removed only if and when you, the members of the jury, are satisfied of the defendant's guilt beyond a reasonable doubt.

The question naturally comes, what is a reasonable doubt. The words almost define themselves. It is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which

1 a reasonable person has carefully weighing all the evidence.
2 Reasonable doubt is a doubt which appeals to your reason,
3 your common sense, your experience and your judgment. It
4 is not caprice, whim or speculation. It is not caprice,
5 whim or speculation. It is not an excuse to avoid the per-
6 formance of an unpleasant duty. It is not sympathy for the
7 defendant.
8

9 If, after a fair and impartial consideration
10 of all the evidence, you can, candidly and honestly, say that
11 you are not satisfied of the guilt of the defendant-- that
12 you do not have an abiding conviction of his guilt-- in sum
13 you have such a doubt as would cause you to hesitate before
14 acting in matters of importance to yourself, then you have
15 a reasonable doubt and in that circumstance, it would be your
16 duty to acquit. On the other hand, if after such a fair and
17 impartial consideration of all the evidence you can, candidly
18 and honestly say you do have an abiding conviction of
19 defendant's guilt.-- such a conviction as you would be willing
20 to act upon in important matters in the affairs of your own
21 life -- then you have no reasonable doubt and in that circum-
22 stance, it would be your duty to convict.

23 One final word on this subject: A reasonable
24 doubt does not mean a positive certainty or beyond all doubt.
25 If that were the rule, few men, however guilty they might
be, would be convicted. It is practically impossible for

1
2 a person to be absolutely and completely convinced of any
3 contraverted fact, which by its nature does not lend itself
4 to mathematical certainty. In consequence, the law in a
5 criminal case is that it is sufficient if the guilt of a
6 defendant is established beyond a reasonable doubt, not
7 beyond all possible doubt.

8 Against this background of principles, let us
9 turn to the indictment charge and the law which it is
10 alleged the defendant violated. The principal statute with
11 which we are concerned is an Act of Congress referred to as
12 the Corrupt Practices Act that was passed in a continuing
13 effort to assure the integrity of the Federal electoral
14 process and to eliminate corruptive influences upon those
15 seeking and holding public office. This law, Section 610
16 of Title 18, United States Code, that is the Federal
17 criminal laws, in pertinent part provides:

18 "It is unlawful for ... any corporation ... to
19 make a contribution ... in connection with any election at
20 which ... a Senator ... [is] to be voted for or in connection
21 with any primary election or political convention or caucus
22 held to select candidates for ... [such office], or for any
23 candidate, political committee or other person to accept or
24 receive any contribution prohibited by this section."

25 Thus, under this statute, it is unlawful, one,

for a corporation to make a contribution and, two, for any person to accept or receive a corporate contribution.

Another law, Section 591 Title 18 United States Code defines a contribution to include a gift, subscription, loan, advance or deposit of money or anything of value.

Finally there is a third law which comes into play which in pertinent part, provides:

"Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The indictment based upon these statutes reads as follows: The Grand Jury charges: 1. At all times material herein, Associated Milk Producers, Inc., (hereafter "AMPI"), was a corporation organized under the laws of the State of Kansas.

2. On or about November 3, 1970, a general election was held pursuant to the Constitution and laws of the United States at which Senators and Representatives to Congress were voted for, and said election was preceded by primary elections, political conventions and caucuses held to elect candidates for said offices.

3. From on or about February 1, 1970, to in or about September 1970, Hubert H. Humphrey was a candidate

for the nomination of the Democratic-Farmer-Labor Party for the office of United States Senator from the State of Minnesota, and from in or about September 1970, to on or about about November 3, 1970, Hubert H. Humphrey was the nominee of the Democratic-Farm-Labor Party for the office of United States Senator from the State of Minnesota.

4. Jack L. Chestnut, the defendant, was at all times material herein, the campaign manager of Hubert H. Humphrey during the campaign described in paragraph 3.

5. From on or about March 1, 1970, to on or about June 25, 1970, in the Southern District of New York and elsewhere, Jack L. Chestnut, the defendant, unlawfully, willfully and knowingly did accept and receive and did cause Lennen & Newell, Inc., an advertising firm providing services to the Humphrey campaign described in paragraph 3, to accept and receive a corporate contribution from AMPI on behalf of the aforesaid Humphrey campaign in connection with the elections described in paragraph 2 in that he (1) arranged with officials of AMPI that AMPI would make payment for one month's services rendered to the Humphrey campaign by Lennen & Newell, Inc., (2) arranged with an official of Lennen & Newell, Inc. that Lennen & Newell, Inc. would prepare invoices for \$12,000.00 addressed to AMPI for one month's services rendered to the Humphrey campaign,

(3) forwarded and caused to be forwarded said invoices to AMPI and (4) forwarded and caused to be forwarded to Lennen & Newell, Inc., two checks drawn on corporate accounts of AMPI dated June 1, 1970, and June 11, 1970, respectively, each in the amount of \$6000.00 and each made payable to Lennen & Newell, Inc.

In order to find the defendant guilty, the Government must establish under the indictment and the evidence beyond a reasonable doubt the following essential elements:

1. that Hubert Humphrey was a candidate in a primary or general election for the office of United States Senator from the State of Minnesota.

2. that Associated Milk Producers, Inc., referred to as AMPI, was a corporation organized under the laws of the State of Kansas.

3, that AMPI made an illegal contribution of \$12,000 to the Humphrey senatorial campaign.

4. that the defendant Chestnut caused another, to wit, Lennen & Newell, Inc., to accept and receive the aforesaid illegal \$12,000 contribution in the Southern District of New York.

I instruct you that the Borough of Manhattan is within the Southern District of New York.

5, that the defendant did so willfully.

Let us consider each element separately. As to the first-- two that Humphrey was a senatorial candidate in the Minnesota primary and general elections and that AMPI was a corporation you should have little difficulty in coming to a judgment. However, since these are essential elements of the crime charged, you must be so satisfied beyond a reasonable doubt.

As to the third element that AMPI made an illegal contribution to the Humphrey campaign, the Government here charges that the contribution to the Humphrey campaign was made indirectly by AMPI by issuing checks drawn upon its corporate funds payable to Lennen & Newell, Inc. to pay invoices which Lennen & Newell had issued for services rendered to the Humphrey campaign. In essence, the Government charges that AMPI picked up a bill, that the Humphrey campaign owed to Lennen & Newell. Paying another's bill when not under a legal obligation to do so is a gift of money or something of value. Thus, if you should find beyond a reasonable doubt that AMPI was a corporation and made a payment from its corporate funds to Lennen & Newell for services rendered by the latter to the Humphrey campaign for which AMPI had no legal obligation, then you have sufficient upon which to find that the payment so made

was a contribution to the Humphrey candidacy.

While the law makes it illegal for a corporation to make contributions to political candidates, it does not prohibit contributions by independent organizations established by corporations to distribute funds derived solely from voluntary contributions by members of the corporation.

There has been evidence that The Trust for Agricultural Political Education, referred to as TAPE, was a committee established to make lawful political contributions on behalf of the members of AMPI. To establish the element, the Government must establish beyond a reasonable doubt that the alleged contribution was made by AMPI from its general corporate funds and not from some fund composed of voluntary contributions from dairy farmers.

The next and fourth element you must find beyond a reasonable doubt is that the defendant Chestnut caused a contribution to the Humphrey campaign to be accepted and received. The words accepted, received and caused, are used in their ordinary everyday meaning. To receive is to take into possession and control. To accept is to receive a thing offered by a consenting person. That is, to receive with intent to retain. To cause, merely means to bring it about.

When one does an act with knowledge that certain consequences will follow in the ordinary course of events, he causes it to happen.

As you know, there is no charge that the AMPI checks totaling \$12,000 were made payable directly to the defendant Chestnut or to the Humphrey campaign. The thrust of the indictment charge is that this was done indirectly, that Chestnut caused Lennen & Newell, Inc. to accept and receive the illegal AMPI contribution to the Humphrey campaign, that he did so by arranging that the advertising agency would bill for two months' services rendered the Humphrey campaign and also arrange with AMPI that it would pay the charges therefor which it did in two payments, each of \$6000, which Chestnut then forwarded or caused to be forwarded to Lennen & Newell which deposited them in its bank account here in the Borough of Manhattan.

With respect to this contention that the defendant caused the receipt and acceptance of the illegal contribution by Lennen & Newell, the Government relies upon the law to which I have already referred, and which bears repetition at this point: "Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal." Under this section, the person

who commits the ultimate act which results in the crime may be innocent of wrongful conduct, yet the

1 person who caused those acts may be guilty of the crime.
2 One can cause the commission of a crime through innocent
3 intermediaries. Thus, in this case, to find that the
4 defendant Chestnut caused Lennen & Newell to accept and
5 receive an illegal contribution, it is not necessary that
6 you find Lennen & Newell knew that the moneys they received
7 in payment of the invoices were illegal contributions. In
8 order to find that the defendant caused another to commit
9 the offense charged, you must be satisfied beyond a reason-
10 able doubt that by his acts and conduct, he caused the
11 acceptance and receipt by Lennen & Newell of a corporate
12 campaign contribution prohibited by law, in short, that
13 the defendant by his deliberate acts and conduct brought
14 into play events which he knew would result in the receipt
15 and acceptance of the prohibited campaign contribution.

17 The Government contends that the defendant was
18 the prime force in causing the commission of the crime
19 under its allegation that he arranged with both AMPI and
20 Lennen & Newell, Inc. the means whereby Lennen & Newell
21 would receive from AMPI a prohibited contribution.

22 The fifth element of the crime charged is that
23 the defendant acted willfully. Willfully means that one
24 acted purposely and with the specific intent to disregard
25 the law or to do that which the law forbids. It means

conscious wrongdoing or as it is sometimes stated, an evil state of mind, a criminal intent and a purpose to violate the law.

Knowingly means that one does an act voluntarily and intentionally and not because of mistake, accident, inadvertence, honest misunderstanding of what the law requires or other innocent reason.

To establish that the defendant acted willfully, the Government must prove more than negligence or carelessness. Thus, to find that the defendant acted willfully, you must be satisfied beyond a reasonable doubt that he caused Lennen & Newell to accept and receive a corporate contribution from AMPI which he knew was illegal-- in other words, that AMPI's corporate funds were being used to pay the Lennen & Newell charges for services rendered to the Humphrey campaign.

On the other hand, if you find that the defendant honestly, but erroneously believed that the contribution came from a fund composed of voluntary political contributions and not from AMPI's corporate funds, then he did not act willfully, as I have defined it because then he would not know the contribution was illegal.

Willfulness involves a state of a man's mind. This is an issue of fact just as much as the state of a

2 man's digestion. Since it is an issue of fact, you are
3 called upon to decide it. How do you decide this? Medical
4 science has not yet devised an instrument so that we can
5 record as of the time of occurrence of events what was then
6 in a person's mind when he committed certain acts. The
7 state of a person's mind may be inferred from his words,
8 his acts, his conduct and all the surrounding circumstances
9 at the time of their occurrence. Thus, direct proof that
10 the defendant intentionally caused another to accept a
11 corporate contribution from AMPI knowing that it was an
12 illegal contribution, is not required. Indeed, it would
13 be a rare case where direct evidence of a person's specific
14 intent is available, since as a general rule one does not
15 publicly announce or sign a statement that his actions were
16 motivated by evil or criminal intent. Accordingly, circum-
17 stantial evidence is usually relied upon.

18 The law recognizes two types of evidence. Direct
19 and circumstantial. Direct is where a person testifies
20 to what he himself heard or saw of which he has knowledge
21 by virtue of his senses. Circumstantial evidence is where
22 proof is given of facts and circumstances from which in
23 terms of common experience, one may reasonably infer the
24 ultimate fact sought to be established. Circumstantial
25 evidence if believed is of no less value than direct

evidence for in either case, the essential elements of the crime must be established beyond a reasonable doubt.

Sometimes in order to convey to a jury perhaps more directly and graphically what is meant by circumstantial evidence so that you have a better understanding of it, I refer to an illustration and this may give you a clearer idea. Today, of course, is a bright clear sunny day. Assume when you came into the courtroom and seated where you are now, bearing in mind that it was a bright day when you entered the courtroom, the blinds on the windows are drawn and in addition to that over the blinds there are drapes where you cannot look out at all. You have no idea what the weather is by means of sight or observation and as we are sitting here a period of time and as the trial is progressing, some individual walks in carrying an umbrella which appears to be wet to you. In a short time he is followed by another person with a raincoat that is wet and in still a little while, you hear a pitter-patter in the area of the window which you cannot see.

If I were to ask you directly can you see the state of the weather, obviously your answer must be no, you can't look beyond the drapes. On the other hand, bearing in mind it was dry and clear outside when you entered, I think you would agree based upon the circumstances of

1
2 one individual walking in with an umbrella that is wet,
3 another one with a raincoat that is wet and the pitter-patter
4 on the window you would be justified in inferring that in
5 fact it is raining outside even though you cannot say so by
6 means of your own senses. You can't see it raining. It is
7 all circumstantial evidence, -- from an established fact you
8 reason to the ultimate fact to be determined in terms of
9 experience.

10 The Government in this case in some measure
11 relies on circumstantial evidence to sustain its burden of
12 proof. In addition to Lilly's and Nova's testimony, it
13 relies upon the defendant's acts and conduct and all the
14 surrounding circumstances of the transactions to support
15 its claims. Thus, willful intent may be inferred from
16 conduct, if you do so find, such as circumstances of intrigue
17 secrecy, artifice or subterfuge to conceal the true nature
18 of a transaction or carry out a transaction in an unusual
19 or irregular manner. In sum, any conduct, the likely effect
20 of which would be to mislead or conceal the true nature of
21 a transaction permits an inference of willful intent.

22 Knowledge on the part of a defendant that one
23 contribution was an illegal corporate campaign contribution
24 also may be inferred from circumstances that would convince
25 a man of ordinary intelligence that this was the fact. The

1
2 element of knowledge may be satisfied by proof that the
3 defendant deliberately closed his eyes to what otherwise
4 would have been obvious to him. Thus, if you find that the
5 defendant acted with reckless disregard of whether the
6 contribution was an illegal corporate contribution and with
7 a conscious purpose to avoid learning the true source of
8 those funds, the requirement of knowledge would be satisfied
9 unless you find the defendant actually believed that the
10 contribution was legal.

11 One may not willfully and intentionally remain
12 ignorant of a fact, important and material to his conduct,
13 in order to escape the consequences of a criminal law. In
14 short, a man cannot just deliberately close his eyes and
15 say he does not see.

16 Evidence was received that records containing
17 information about contributors to the 1970 Senator Humphrey
18 campaign maintained by the defendant were destroyed by his
19 secretaries with his knowledge and consent. If you find
20 beyond a reasonable doubt that the defendant's purpose
21 was to destroy or suppress such documents at a time when
22 he knew investigative officials were interested in them,
23 this permits an inference that the documents would have
24 been adverse to the defendant and allows but does not compel
25 an inference of a consciousness of guilt. On the other

1
2 hand, if you find that the defendant had no purpose to
3 frustrate investigative inquiry or the circumstances
4 surrounding the destruction of the documents are consistent
5 with innocence or occurred in the regular course of one's
6 ordinary business or for the purpose of making additional space
7 available without any purpose to destroy any material matter,
8 then you should draw no inference. Moreover, it is only
9 if you find the destroyed documents had some bearing or
10 relationship to the issues in this case may you consider
11 whether any inference may or may not be drawn from their
12 destruction.

13 Also during the trial evidence was admitted
14 of other transactions involving the defendant and Lilly
15 in which AMPI's funds were made available to the Humphrey
16 campaign. Evidence of similar acts and conduct may tend
17 to show a consistent pattern of conduct relevant to the
18 issues of knowledge and intent.

19 As I told you then, and repeat now, that evidence
20 was received solely limited to show the defendant's know-
21 ledge and intent when the Government claims he accepted
22 or caused the acceptance of a \$12,000 contribution from
23 AMPI, as charged in the indictment.

24 The evidence was not received, and may not
25 be considered, as tending to prove the acts charged in the

1
2 indictment. It is not proof whatever of the crime the
3 defendant is charged with committing. It is, I repeat,
4 strictly limited to the issue of defendant's intent and
5 knowledge as to whether defendant knew the alleged corporate
6 contribution. by AMPI was illegal.

7 Before leaving this subject, a further word of
8 caution. There has been evidence that Mr. Lilly and
9 others were unlawfully reimbursed from corporate funds for
10 contributions made from personal accounts. There is, how-
11 ever, no evidence that defendant was aware of this system
12 of reimbursement within AMPI, and you may not draw any
13 inference against the defendant because of this system of
14 reimbursement nor attribute knowledge of it to him.

15 Let us turn to the evidence. Counsel in summing
16 up reviewed the testimony in detail and urged upon you their
17 respective contentions. I shall refer to the testimony
18 only in barest outline to focus attention upon some of
19 the factual issues. The structure of the Government's
20 case and the issues under the indictment are comparatively
21 simple.

22 The Government contends that the defendant's
23 arrangement for the billing by Lennen & Newell to AMPI
24 for two months services rendered for the Humphrey campaign an
25 arrangement made by the defendant with both AMPI and

1
2 Lennen & Newell-- was to obtain a campaign contribution of
3 \$12,000 from AMPI; that the defendant knew that in payment
4 of the invoices for services rendered to the Humphrey
5 campaign, AMPI's corporate funds were being used and not
6 those of a voluntary political fund.

7 The Government points to the very method of
8 the transaction and cites its unusual nature; that is,
9 Lennen & Newell billing AMPI when in fact it had rendered
10 no services to AMPI to establish that the defendant was
11 fully aware of the source of the funds and in effect, that
12 this was an attempt to conceal the true nature of the
13 transaction. It also relies on the checks sent by AMPI
14 in payment of the invoices, which checks upon their face
15 in two places clearly carry the legend "Associated Milk
16 Producers, Inc."

17 The Government urges that the defendant not
18 only saw those checks but caused them to be mailed and
19 delivered to Lennen & Newell. The Government also points
20 to Lilly's testimony that he told the defendant in one
21 conversation with respect to a contribution that it was
22 an AMPI contribution.

23 The Government further relies upon the two
24 letters which defendant wrote to Lilly relative to the
25 billing by Lennen & Newell to AMPI and the payment

2 by the latter as supporting its burden of proof.

3 In totality, the Government contends that by
4 direct and circumstantial evidence it has abundantly
5 established its burden of proof as to each element.

6 Now as to the defendant's case. Basically
7 the defendant testified that AMPI was well-known in the
8 state of Minnesota as representing the dairy farmers
9 political and other interests there and in other states;
10 that early in 1970, at the start of the Humphrey campaign,
11 AMPI representatives, including Harold Nelson and Bob Lilly,
12 had pledged on behalf of AMPI \$40,000 to \$50,000 towards
13 the Humphrey candidacy.

14 The defendant further testified that he under-
15 stood that Lilly represented the political arm of AMPI
16 that could make legal contributions to political candidates.

17 Defendant also testified that he believed
18 that AMPI's contribution received by Lennen & Newell, the
19 subject matter of the charges here, as well as the three
20 other contributions, the two made by Lilly's personal checks
21 and the Lilly cash payment of \$12,500, were legal contributions
22 from AMPI's political arm and were in fulfillment of the
23 \$40,000 or \$50,000 contribution.

24 Specifically, as to the Lennen & Newell trans-
25 action, the defendant does not recall the mechanics of it.

He does not recall dictating Exhibits 6 and 7 or signing them. He does not dispute that the two AMPI checks payable to Lennen & Newell were received at his office. He does deny that he saw the checks, which as I have stated on their face carry the legend Associated Milk Producers, Inc.

In sum, as to the Lennen & Newell transaction, the only thing he testified he remembers about all the documents pertaining to it is that he never saw the checks.

I have refrained from any attempt to array all the evidence in the case particularly because it has been evident to me you followed the testimony of the trial with keen and absorbing interest. The fact that I have not attempted to review the testimony of all witnesses, or my failure to comment on any other part of the evidence is no indication that these have been disregarded or that I am placing special emphasis upon such testimony as I have called to your attention. You must of course consider all the testimony and exhibits in the case. All evidence is important.

In the reference that I made to the evidence, I have, of course, attempted to adhere to the trial record. Again, as I mentioned at the start of these instructions, if perchance any statement I made is not in accord with your own recollection of the testimony, you will disregard

my statement and depend entirely upon your own recollection of the evidence. It is evident there are, to say the least, a number of substantial issues which are in dispute. A number of questions occur:

Did the defendant know that the payments to Lennen & Newell came from AMPI's corporate funds? Did he believe that those payments as well as those received by him from Lilly, were legal and made by Lilly acting on behalf of the political arm of AMPI?

Did the defendant ever see the AMPI checks of \$6000 each, Exhibits 3 and 4?

Other questions I am sure suggest themselves to you.

Obviously in determining the various questions which you are called upon to decide, you will have to pass upon the credibility of witnesses. How do you determine where the truth lies? I mentioned at the very start of the trial before you heard a single word of testimony, it was important for you not only to listen, but to look at and observe each witness as he or she testified. Your determination of the credibility of a witness largely depends upon the impression he or she made upon you as to whether or not he or she was giving an accurate version of what occurred.

1 rkds
2 I often say to jurors when you walk into this
3 courtroom and sit in the jury box while the trial is going
4 on, or while you are deliberating in the jury room, you
5 have with you your common sense, your good judgment and
6 your experience.

7 The degree of credit to be given a witness
8 should be determined by his demeanor, his relationship to
9 the controversy and to the parties, his bias or impartiality,
10 the reasonableness of his statements, the strength and
11 weakness of his recollection viewed in the light of all
12 other testimony and attendant circumstances in the case.

13 How did the witness impress you? Did his
14 version appear straightforward and candid, or did he try
15 to hide some of the facts? Is there a motive to testify
16 falsely or to fabricate?

1 In other words, what you do to use the vernacular,
2 is to size up a person just as you would in any important
3 matter where you are undertaking to determine whether or
4 not a person is truthful, candid and straightforward.
5

6 In passing upon the credibility of a witness,
7 you may take into account inconsistencies and contradictions
8 as to material matters in his own testimony or any conflict
9 with that of another witness. Also, any omissions in prior
10 testimony or any prior inconsistent statement of material
11 matters as to which he testified upon the trial.

12 If a witness has given prior testimony under
13 oath before a judicial body, such as a Grand Jury which
14 you find is inconsistent or at variance with his or her
15 testimony at this trial, you have a right to determine
16 which version to accept.

17 The ultimate question for you in passing upon
18 the credibility of a witness is did the witness tell the
19 truth before you? It is for you to say whether this
20 testimony at this trial is truthful, in whole or in part
21 in the light of his demeanor, his explanations and all the
22 evidence in the case.

23 The rules of evidence ordinarily do not permit
24 witnesses to testify as to opinions or conclusions. An
25 exception to this rule exists as to those whom we call

expert witnesses. Witnesses who by education and experience have become expert in some art, science, profession or calling, may state an opinion as to relevant and material matters which they profess to be expert and may also state the reasons for the opinion. You should consider the expert opinion received in evidence and give it such weight as you think it deserves. If you should decide that the opinion of an expert is not based upon sufficient education and experience or if you should conclude that the reasons given supporting the opinion are not sound, you may disregard the opinion entirely.

The law permits but does not require a defendant to testify in his own behalf. The defendant has taken the witness stand. Obviously a defendant has a deep personal interest in the result of his prosecution. Indeed, it is fair to say that he has the greatest stake in its outcome. Interest creates a motive for false testimony. The greater the interest, the stronger the motive and a defendant's interest in the result of his trial is of a character possessed by no other witness.

In appraising his credibility, you may take that fact into consideration. However, it by no means follows that simply because a person has a vital interest in the end result he is not capable of telling a truthful,

1 candid and straightforward story. It is for you to decide
2 to what extent, if at all, his interest has affected or
3 colored his testimony.
4

5 If you find that any witness, and this applies
6 to all witnesses, Government and defense, has willfully
7 testified falsely to any material fact, you have a right
8 to reject the testimony of that witness in totality, or
9 to accept only that part or portion which commends itself
10 to your belief or which you may find corroborated by other
11 evidence in the case.

12 The defendant has called witnesses who have
13 testified to his character or more correctly, to his
14 reputation in the community for honesty, truthfulness and
15 integrity. You should consider this evidence together with
16 all other evidence in determining his guilt or innocence.
17 Evidence of good reputation may in itself create a reason-
18 able doubt where without such evidence, no reasonable doubt
19 would exist. But if from all the evidence you are satisfied
20 beyond a reasonable doubt that the defendant is guilty,
21 a showing that he previously enjoyed the reputation of good
22 character, does not justify or excuse the offense and you
23 should not acquit him merely because you believe he has
24 been a person of good repute.

25 During one summation yesterday, a rhetorical

question was asked by counsel, "Where is Harold Nelson?"

I charge you that there is no proof in the case that Harold Nelson is under the control of either the Government or the defendant. If the defense or the Government desired his testimony, the subpoena power of the Court was available to compel his appearance at this trial. In this circumstance, you may draw no inference, favorable or adverse, either against the Government or the defense by reason of Nelson's nonappearance at this trial.

The Government to prevail must prove the essential elements by the required degree of proof, as already explained in these instructions. If it succeeds, your verdict should be guilty. If it fails, it should be not guilty. To report a verdict, it must be unanimous. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and these instructions.

Under your oath as jurors, in the event the evidence warrants a verdict of guilty, you cannot allow a consideration of the punishment which may be imposed upon the defendant, if he is convicted, to enter into your deliberations or influence your verdict in any way. Your sole duty is to decide whether or not the Government has sustained its burden of proof as to the charges.

1
2 In the event of conviction, the duty and responsibility of
3 imposing sentence rests solely with the Court.

4 Each juror is entitled to his or her own opinion.
5 You should, however, exchange views with your fellow jurors.
6 That is the very purpose of jury deliberation to discuss and
7 consider the evidence; to listen to the arguments or fellow
8 jurors; to present your individual views; to consult with
9 one another; and to reach an agreement based solely and
10 wholly on the evidence. Each juror must decide the case for
11 himself or herself after consideration with fellow jurors
12 of the evidence in the case. But you should not hesitate to
13 change your opinion which, after discussion with your fellow
14 jurors appears erroneous, or should yield in the light of
15 the evidence. However, after carefully considering all of
16 the evidence and arguments of your fellow jurors you entertain
17 a conscious view that differs from others, you are not to
18 yield your conviction simply because you are outweighed or
19 outnumbered. Your final vote must reflect your own conscientious
20 judgment as to how the case should be decided.

21 The charge here made is serious. The just
22 determination of this case is important to the public. It
23 is equally important to the defendant. Under your oath
24 as jurors, you must decide this case without fear or favor
25

and solely as I have stated a number of times in accordance with the evidence and the law.

If the Government has failed to carry its burden, your sworn duty is to acquit. If it has carried its burden, you must not flinch from your sworn duty. You must convict.

Members of the jury, I suggest you stay in the jury box. I want to see the lawyers in the robing room.

(In the robing room)

THE COURT: The defendant may state its exceptions.

MR. NORDBY: The defense would renew the request previously submitted in writing --

THE COURT: No, you can't do that in that generalized way. There are quite a number that were withdrawn. You must take specific exceptions.

MR. NORDBY: The defense objects to the Court's failure to instruct the jury that no violations of Section 608 was shown and that as a matter of law, the payments from Lilly other than the two AMPI checks in question did not violate Section 603.

THE COURT: You are always assuming similar acts must be violations of law. This was admitted for the purpose of showing a pattern of conduct.

What is the next one?

MR. NORDBY: Defendant excepts to the Court's failure to instruct the jury on the difference between an expenditure and contribution as requested in defendant's request No.22. In the same regard, the defendant excepts to the Court's instruction to the jury that paying another's bill is a gift of money and if found, a contribution, for the same reasons previously argued and I won't belabor that.

The defense excepts to the Court's instruction that the unusual manner of this transaction permits the inference of willfulness.

The defendant renews its objection to the Court's instruction that the defendant has a motive for false testimony stronger than any other witnesses to the Court's singling out of the defendant's testimony in the credibility instructions and would ask the Court to instruct the jury that defendant's testimony is to be treated exactly as any other witness.

THE COURT: Does that state your exceptions?

MR. NORDBY: Yes.

(In open court)

THE COURT: Excuse the two alternates.

(The alternates were excused)

(The marshal was sworn)

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2 (The jury commenced its deliberations at
3 11:00 o'clock a.m.)

4 (Recess)

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THE COURT: In the case on trial, I have a note from the jury: "We want checks, \$6,000 each." Those are exhibits 3 and 4, aren't they?

MR. BANNIGAN: That's correct, your Honor.

THE COURT: "And \$10,000. Sample signature."

MR. BANNIGAN: Sample signature? Which one?

THE COURT: They don't state. Let's go on. "Papers from New York Bank." That must be the Bankers Trust. What exhibit number is that?

MR. BANNIGAN: The Bankers Trust Exhibit numbers, your Honor -- one moment -- Exhibits 27 and 28.

THE COURT: Show them to Mr. Thomson.

Wasn't Exhibit number 26 the stipulated sample?

MR. BANNIGAN: Yes, your Honor, that's correct.

THE COURT: Perhaps they mean that.

MR. BANNIGAN: I don't know. They said example signature. Example signatures are the exemplars.

THE COURT: Maybe I better ask them what they want.

All right, number 6 and 7. That is Exhibits 6 and 7.

MR. BANNIGAN: Those are the letters, your Honor.

THE COURT: And they want Penny Miller's state-

ment?

MR. BANNIGAN: Yes, your Honor, that's 16.

Then I see testimony B. Lilly and J. Nova.

Then five points mentioned in the Judge's summary. I guess they are referring to essential elements. I better call them in if we are going to read that testimony. It will take about three hours.

We will see just what they want. Suppose you have the other exhibits ready. Show them to Mr. Thomson so there is no delay. Let me have those exhibits now if they are ready? Have you checked them, Mr. Thomson?

MR. THOMSON: Yes, I have checked them. We don't know about 20 over whatever it is. What is 20?

MR. BANNIGAN: That is the exemplar signatures. There are a number of example signatures.

THE COURT: I don't know which one they want.

(11:35 a.m. Jury present.)

THE COURT: Members of the jury, I have your note and for clarification, I may want to ask some questions. First you ask for the checks of \$6,000 each, those are Exhibits 3 and 4, and the \$10,000 check, that is Exhibit 10. That will be given to you.

Next you ask for a sample signature. There are a number of exemplars that went in. Do you want all the

1 mbe

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2 exemplars or what?

3 JUROR NO. 9: I think what we wanted was the
4 stipulated signature.

5 THE COURT: The stipulated signature?

6 JUROR NO. 9: And also the American Express
7 signatures, if we could see those to get some idea of what--

8 THE COURT: All right.

9 What number is that, 26, the stipulated signa-
10 ture?

11 MR. BANNIGAN: It is there, your Honor.

12 THE COURT: Where the American Express --

13 MR. BANNIGAN: 22, your Honor.

14 (Exhibits handed to the court.)

15 THE COURT: Now, letters six and seven, we have
16 those for you. Penny Miller's statement is Government's
17 Exhibit 16. Your next question is testimony of B. Lilly
18 and J. Nova.

19 That would take about three or four hours to
20 read. Is there any specific portion that you wanted without
21 discussing it publicly?

22 Can you agree on that now?

23 JUROR NO. 8: I requested the testimony. I want
24 to see a specific instance in their testimonys. You want
25 me to tell you exactly what I was looking for?

1
2 THE COURT: You can -- is there any objection to
3 stating what -- what portion do you want?

4 JUROR NO. 8: In Lilly's testimony, I wanted
5 to see if he made reference to the fact that he actually
6 told Mr. Chestnut that AMPI -- the fund, were actually for
7 AMPI Corporation.

8 THE COURT: There is a reference, I believe, at
9 144 with respect to one item and there is also a reference,
10 I think in the morning of the second day when the witness
11 testified.

12 Supposing you check with counsel. I can tell you
13 right where it is, at 144, page 144. I remember that, and
14 the first morning, that is the first session of the second
15 day.

16 THE COURT: Line 19 of 144. Where is the other
17 portion?

18 MR. BANNIGAN: I am trying to locate that.

19 THE COURT: You questioned him, Mr. Bannigan,
20 about that, as I remember it.

21 MR. BANNIGAN: Yes, I believe it begins at
22 page 164, your Honor, beginning on line --

23 THE COURT: Line 24.

24 MR. BANNIGAN: Line 18.

25 THE COURT: Line 18? And down through to where?

MR. BANNIGAN: Carrying over to line 7 on the following page.

THE COURT: Are there any other places? Mr. Thomson, do you have any reference you want to make in that?

MR. THOMSON: Yes, there is, your Honor.
May I just have a moment.

THE COURT: All right.

In the meantime, give these Exhibits to the forelady.

(Exhibits handed to the forelady.)

THE COURT: What is this Exhibit 27?

Those are the American Express records.

MR. BANNIGAN: I thought that was mentioned in the note.

JUROR NO. 2: Yes.

THE COURT: Papers of New York Bank, yes.

JUROR NO. 2: Yes.

(Exhibits handed to the Court.)

THE COURT: Where were the American Express papers?

MR. BANNIGAN: I have handed them. I believe they are 22.

THE CLERK: Yes, the forelady has Exhibit 22.

2 MR. BANNIGAN: Your Honor, the American Express,
3 I have forgotten, there were a number of other American
4 Express items that were not used by the witness but were
5 identified. Do they want them?

6 THE COURT: Are they in evidence?

7 MR. BANNIGAN: Yes,

8 JUROR NO. 1: We just want one, just for signa-
9 ture.

10 MR. BANNIGAN: They were all introduced for that
11 purpose.

12 THE COURT: Mr. Thomson, if you are going to
13 read the whole thing, we may as well read the whole thing
14 to the jury.

15 MR. THOMSON: I was going to say page 183, your
16 Honor.

17 THE COURT: Pardon.

18 MR. THOMSON: Page 183.

19 MR. BANNIGAN: I would object to that, your
20 Honor. I think we ought to approach the side bar.

21 THE COURT: What line?

22 MR. THOMSON: Commencing with folio 4, your
23 Honor; down to line 17.

24 THE COURT: No, I will read down through 13.

25 MR. BANNIGAN: I have no objection to that at

all, your Honor.

(The Court read from page 144, 163, to 185.)

THE COURT: Now the next reference is to the testimony of Nova. Is there any particular portion that is sought there?

JUROR NO: 8: I believe there was a conversation where they set out the arrangements, Mr. Chestnut and Mr. Nova, of I believe how funds would be -- the payment of Lennen & Newell being by --

THE COURT: AMPI. All right. I think we can find that for you.

Gentlemen, at the bottom of page 71, if you follow me there, I think I have the reference that the jury inquired about. This is the testimony of Mr. Nova of Lennen & Newell.

(The Court read the testimony as requested at pages 71-72.)

THE COURT: Do you want anything beyond that?

JUROR NO: 8: No, that's it.

THE COURT: Now, then you asked for the five points mentioned in the Judge's summary. I take it that those are the five essential elements that I referred to. I stated them first in general terms. In order to find a defendant guilty, the Government must establish beyond a

reasonable doubt the following essential elements:

One, that Hubert H. Humphrey was a candidate in a primary of general election for the office of United States Senator for the State of Minnesota.

Two, that Associated Milk Producers, Inc., referred to as AMPI, was a corporation organized under the laws of the State of Kansas.

Three, that AMPI made an illegal contribution of \$12,000 to the Humphrey Senatorial Campaign.

Four, that the defendant Chestnut caused another, to wit, Lennen & Newell, Inc., to accept and receive the aforesaid illegal \$12,000 contribution in the Southern District of New York, and I instruct you that the Borough of Manhattan is within the Southern District of New York.

And five, that the defendant did so wilfully.

Then, I proceed to discuss each one separately. Is that what you want?

JUROR NO. 9: Would it be possible to have a copy of that to take back with us?

THE COURT: Well, I can send that in to you if you want it.

MR. THOMSON: Your Honor, may I suggest that the five essential elements go in also with the Court's explanation of each of elements?

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2 THE COURT: Do you want the explanation of it, or
3 just these five elements?

4 JUROR NO. 9: The five elements is enough.

5 THE COURT: All right, I will give you the five
6 elements.

7 All right, I think that takes care of everything.
8 What is this HEA here?

9 MR. BANNIGAN: That was a handwriting example,
10 your Honor, given to the FBI by Mr. Chestnut.

11 THE COURT: No, they have 26 already. That is
12 the one that was stipulated.

13 THE COURT: All right, ladies and gentlemen of
14 the jury, you may resume your deliberations.

15 (Jury retires to resume deliberations at 11:35
16 a.m.)
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2 (The jury resumed deliberations at 1:35 p.m.)

3 (Recess)

4 (At 2:20 p.m., the jury announced it had reached
5 a verdict.)

6 (In open court-jury present)

7 THE CLERK: Members of the jury, please answer as
8 your names are called:

9 (Jury roll called-all present)

10 THE CLERK: Madam Forelady, has the jury agreed upon
11 a verdict?

12 THE FORELADY: Yes.

13 THE CLERK: How do you find the defendant Jack L
14 Chestnut/

15 THE FORELADY: We find the defendant guilty.

16 THE CLERK: Madam Forelady, listen to the verdict
17 as it stands recorded. You say you find the defendant guilty
18 and so say you all.

19 MR. TOMSON: Request the jury be polled.

20 THE CLERK: Ladies and gentlemen of the jury, you
21 say you find the defendant guilty, (All jurors having been
22 asked the question, "Is that your verdict?", answered in the
23 affirmative.)

24 THE CLERK: The jury has been polled. The verdict
25 is unanimous.

(Jury excused.)

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2 THE COURT: The Court will require a presentence
3 report in this case.

4 In view of the defendant's residence, it will take
5 a little longer than the usual time. The court will set
6 the matter down for sentence for June 26, 1975.

7 Is that a convenient date for you, Mr. Thomson?

8 MR. THOMSON: Yes it is, your Honor.

9 THE COURT: You are requested to go to the probation
10 office.

11 What is the bail situation? Is there any objection
12 if the defendant is continued on his present status?

13 MR. BANNIGAN: He is released on his own recognizance
14 The government has no objection to continuing that.


15 THE COURT: The defendant is released on his own
16 recognizance to the day of sentence. Ten o'clock in this
17 courtroom.

18 Good day.
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STATE OF MINNESOTA

COUNTY OF RAMSEY

JACK S. NORDBY, OF THE CITY OF ST. PAUL, COUNTY OF RAMSEY
IN THE STATE OF MINNESOTA, BEING DULY SWORN, SAYS THAT ON THE 26th
DAY OF AUGUST, 1975, HE SERVED TWO COPIES OF APPELLANT'S BRIEF AND
ONE COPY OF THE APPENDIX IN THE CASE OF UNITED STATES V. CHESTNUT,
DOCKET NO. 75-1268 UPON PAUL J. CURRAN, UNITED STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK, BY MAILING TO HIM SAID COPIES, POSTAGE
PREPAID AT MINNEAPOLIS, MINNESOTA, AND BY DEPOSITING SAME IN THE POST
OFFICE AT MINNEAPOLIS, MINNESOTA, DIRECTED TO SAID ATTORNEY AT
1 ST. ANDREW'S PLAZA, NEW YORK, NEW YORK, 10007.


JACK S. NORDBY

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 26th DAY OF AUGUST, 1975.

